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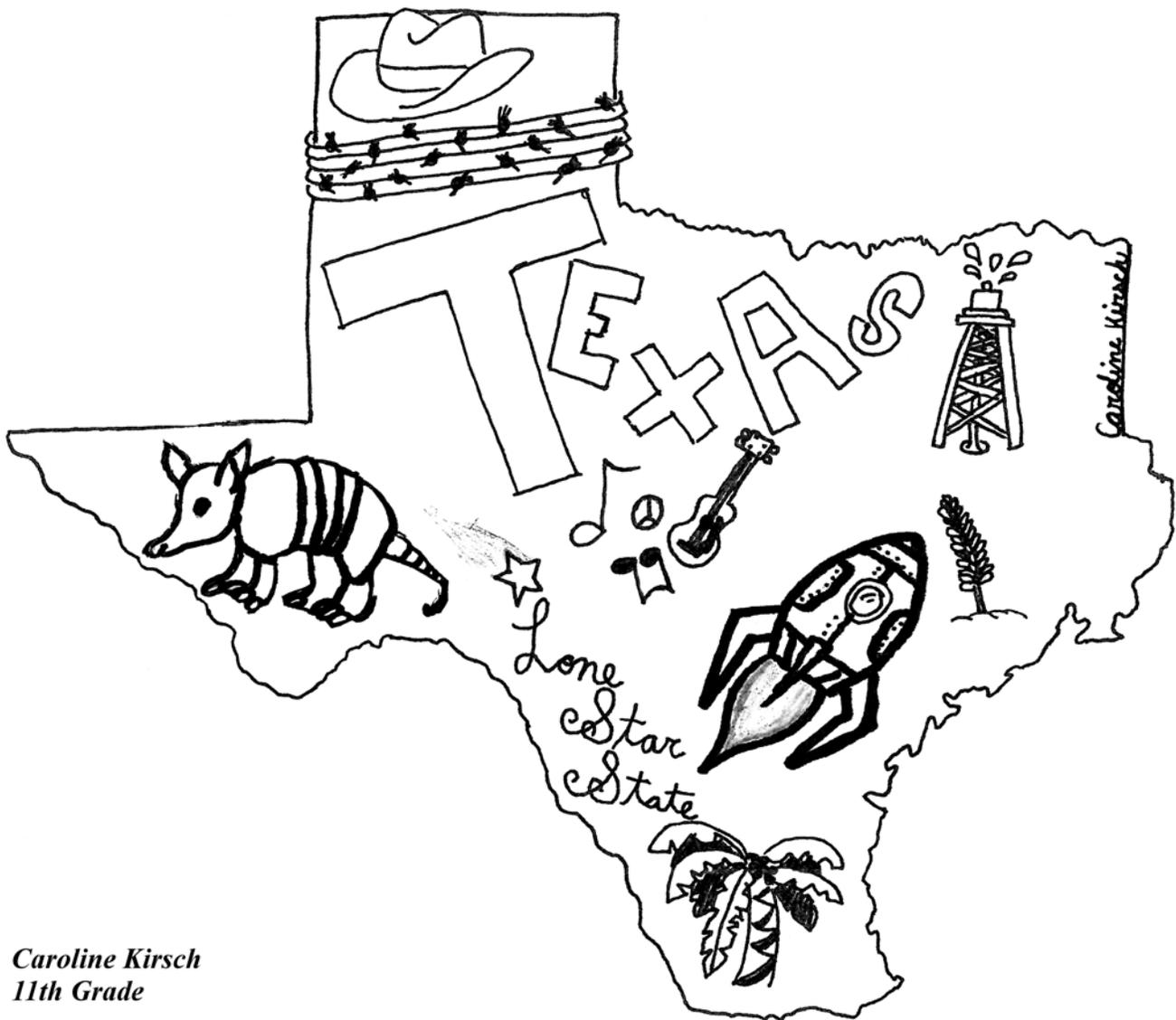
# TEXAS REGISTER

*Volume 41 Number 3*

*January 15, 2016*

*Pages 547 - 894*

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*Caroline Kirsch  
11th Grade*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# TEXAS REGISTER

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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://texasattorneygeneral.gov/og/open-government>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.texas.gov>

...

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for December 3, 2015

Appointed to the Manufactured Housing Board for a term to expire January 31, 2017, Ronald M. "Ronnie" Richards of Clear Lake Shores (replacing Brenda J. Swinney of Paige who resigned).

Appointed to the Manufactured Housing Board for a term to expire January 31, 2019, Kiran Shah of Richmond (replacing Myeshi V. Williams-Briley of Spring who resigned).

### Appointments for December 4, 2015

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2017, Stephen F. "Steve" Cooper of El Campo (replacing James Scott Arbuckle of El Campo who resigned).

### Appointments for December 7, 2015

Appointed to the OneStar National Service Commission for a term to expire March 15, 2016, Annette Gracy Juba of Austin (replacing Romanita Matta-Barrera of San Antonio who resigned).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2016, Katherine J. "Kate" Williamson of Midland (replacing Cynthia B. Nunn of DeSoto who resigned).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2017, James K. Senegal of Conroe (replacing Larry Pittman Goddard of Tyler who resigned).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2018, Kirk M. Beckert of Richardson (Mr. Beckert is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2018, Sonal S. Bhuchar of Sugar Land (replacing Dan S. Woodward of Houston whose term expired).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2018, Laura D. Dixon of San Antonio (replacing Arturo "Art" Serna, Jr. of Edmund whose term expired).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2018, Veronica M. "Ronnie" Hagerty of Houston (Dr. Hagerty is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2018, Roger E. O'Dell of El Paso (replacing Robert Marbut, Jr. of San Antonio whose term expired).

Designating Veronica M. "Ronnie" Hagerty of Houston as chair of the OneStar National Service Commission for a term at the pleasure of the Governor. Dr. Hagerty is replacing Robert Marbut, Jr. of San Antonio as chair.

Designating Elisa G. "Lisa" Lucero of Austin as vice chair of the OneStar National Service Commission for a term at the pleasure of the governor.

Designating Rolando Pablos of El Paso as presiding officer of the Texas Racing Commission for a term at the pleasure of the Governor. Mr. Pablos is replacing Robert H. Schmidt of Aledo as presiding officer.

### Appointments for December 9, 2015

Appointed to the Texas State Board of Examiners of Professional Counselors for a term to expire February 1, 2021, Loretta J. Bradley of Lubbock (replacing Brenda S. "Brandi" Buckner of Weatherford whose term expired).

Appointed to the Texas State Board of Examiners of Professional Counselors for a term to expire February 1, 2021, Brenda S. Compagnone of San Antonio (replacing Efrain Avila, Jr. of Universal City whose term expired).

Appointed to the Texas State Board of Examiners of Professional Counselors for a term to expire February 1, 2021, Christopher S. Taylor of Dallas (replacing Karen R. Burke of Austin whose term expired).

### Appointments for December 15, 2015

Appointed to the Texas Water Development Board for a term to expire February 1, 2017, Kathleen T. Jackson of Beaumont (replacing Carlos Rubinstein of Austin who resigned).

Appointed to the Texas Water Development Board for a term to expire February 1, 2021, Peter M. Lake of Dallas (replacing Kathleen T. Jackson of Beaumont).

### Appointments for December 16, 2015

Appointed to the Finance Commission of Texas for a term to expire February 1, 2020, Hector J. Cerna of Eagle Pass (replacing Larry L. Patton of El Paso who resigned).

### Appointments for December 17, 2015

Appointed to the Sabine River Authority Board of Directors for a term to expire July 6, 2021, Cary M. "Mac" Abney of Marshall (Mr. Abney is being reappointed).

Appointed to the Sabine River Authority Board of Directors for a term to expire July 6, 2021, Kimberly J. Fish of Longview (replacing Connie K. Wade of Longview whose term expired).

Appointed to the Sabine River Authority Board of Directors for a term to expire July 6, 2021, Jeanette L. Sterner of Holly Lake Ranch (replacing Constance M. "Connie" Ware of Marshall whose term expired).

### Appointments for December 21, 2015

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2017, Kal A. Kincaid of Beaumont (replacing William F. "Will" Scott, II of Nederland who resigned).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2019, Steven R. "Steve" Lucas of Beaumont (replacing Thomas L. "Lonnie" Arrington of Beaumont who resigned).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2021, Lonnie B. Grissom, Jr. of Woodville (replacing Jimmie Ruth Cooley of Woodville whose term expired).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2021, Virginia "Ivy" Pate of Beaumont (Ms. Pate is being reappointed).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2021, Juanita "Jeanie" Turk of Sour Lake (replacing Mary "Sue" Cleveland of Kountze whose term expired).

**Appointments for December 22, 2015**

Pursuant to SB 1844, 84th Legislature, Regular Session, appointed to the Interagency Data Transparency Commission for a term at the pleasure of the Governor, Stacey Napier of Austin. Ms. Napier will serve as presiding officer of the commission.

Greg Abbott, Governor  
TRD-201600037



**Proclamation 41-3471**

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of Texas, do hereby certify that the severe winter weather and tornado event that began on December 26, 2015, and continuing, has caused a disaster in Collin, Dallas, Ellis and Rockwall Counties in the State of Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the counties listed above based on the existence of such threat.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of December, 2015.

Greg Abbott, Governor  
TRD-201600038



**Proclamation 41-3472**

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, GREG ABBOTT, Governor of Texas, issued an Emergency Disaster Proclamation on December 26, 2015, certifying that the severe winter weather and tornadic events that began on that date have caused a disaster in Collin, Dallas, Ellis and Rockwall Counties.

WHEREAS, those same conditions continue to exist in those counties and have continued to cause a disaster to exist in Wichita County.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I, do hereby declare a state of disaster in Collin, Dallas, Ellis, Rockwall and Wichita Counties in the State of Texas.

Pursuant to Section 418.017 of the Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed in the City of Austin, Texas, this the 31st day of December, 2015.

Greg Abbott, Governor  
TRD-201600039



# THE ATTORNEY GENERAL

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The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

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Requests for Opinions

**RQ-0087-KP**

**Requestor:**

The Honorable Carlos Omar Garcia

79th Judicial District Attorney

Jim Wells and Brooks Counties

Post Office Drawer 3157

Alice, Texas 78333

Re: Requirements for a municipality's posting of notice regarding the carrying of handguns (RQ-0087-KP)

**Briefs requested by January 28, 2016**

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-201506008

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: December 30, 2015



Requests for Opinions

**RQ-0088-KP**

**Requestor:**

Mr. Michael Williams

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Whether a school district board of trustees may enter into a contract for legal services under a flat fee arrangement (RQ-0088-KP)

**Briefs requested by February 3, 2016**

**RQ-0089-KP**

**Requestor:**

The Honorable Rod Ponton

83rd District Attorney

400 South Nelson Street

Ft. Stockton, Texas 779735

Re: Whether the display of a cross with a thin blue line on a sheriff patrol vehicle violates the First Amendment to the U.S. Constitution (RQ-0089-KP)

**Briefs requested by February 4, 2016**

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-201600075

Amanda Crawford

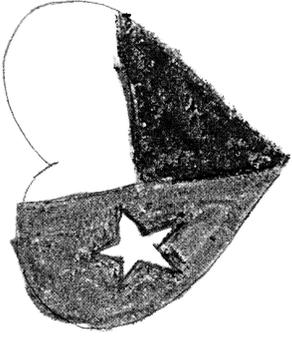
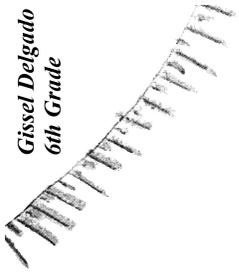
General Counsel

Office of the Attorney General

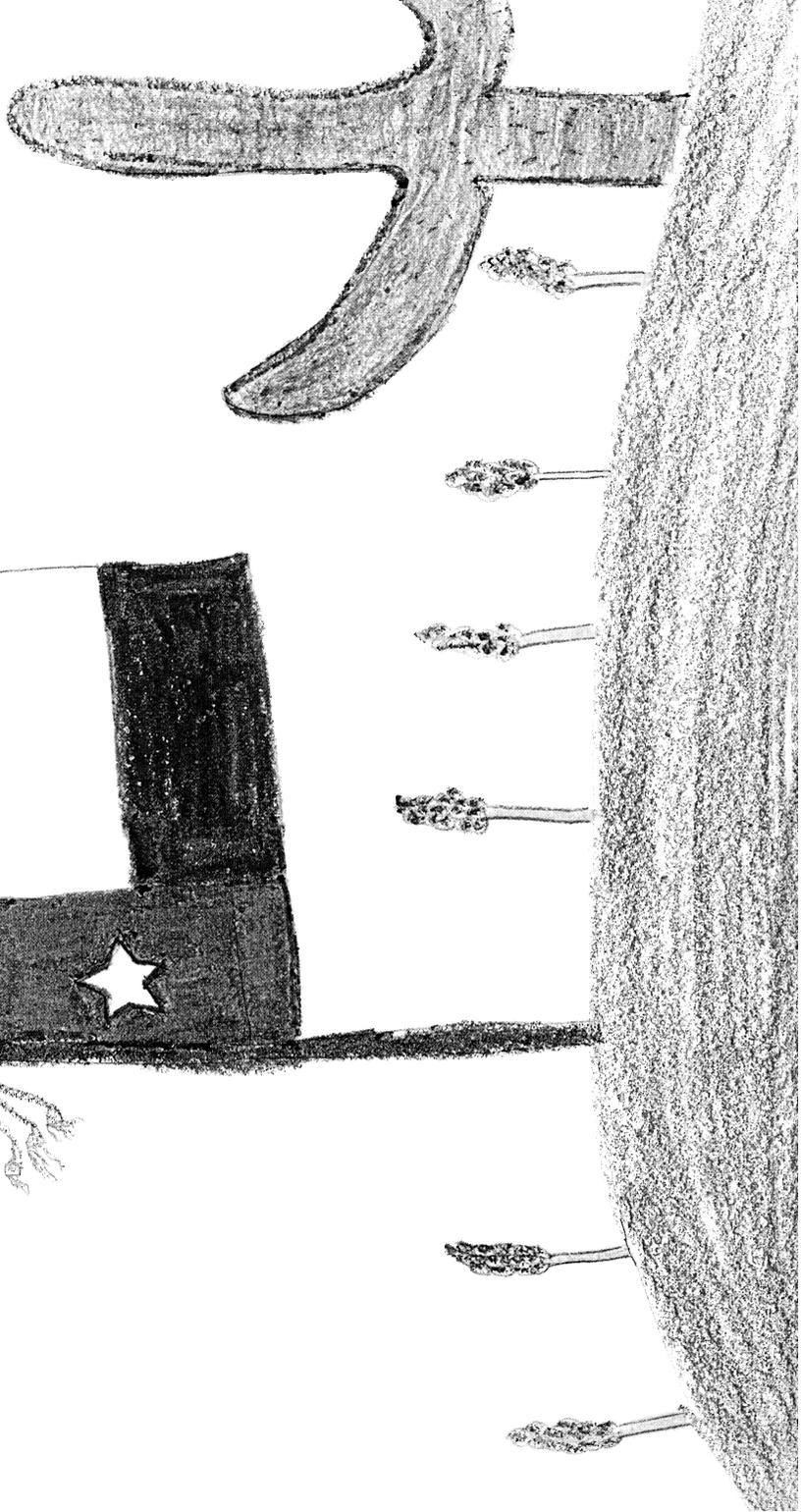
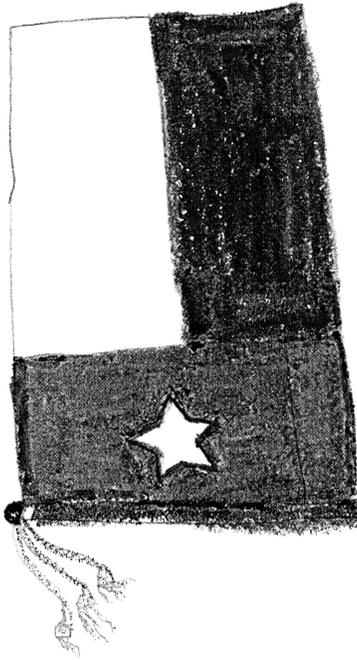
Filed: January 6, 2016



Gissel Delgado  
6th Grade



TEXAS



# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Advisory Opinion Requests

The Texas Ethics Commission has been asked to consider whether an employee of a state agency may accept from persons regulated by the agency subscription fees for operating a website that compiles publicly available information. **(AOR-606)**

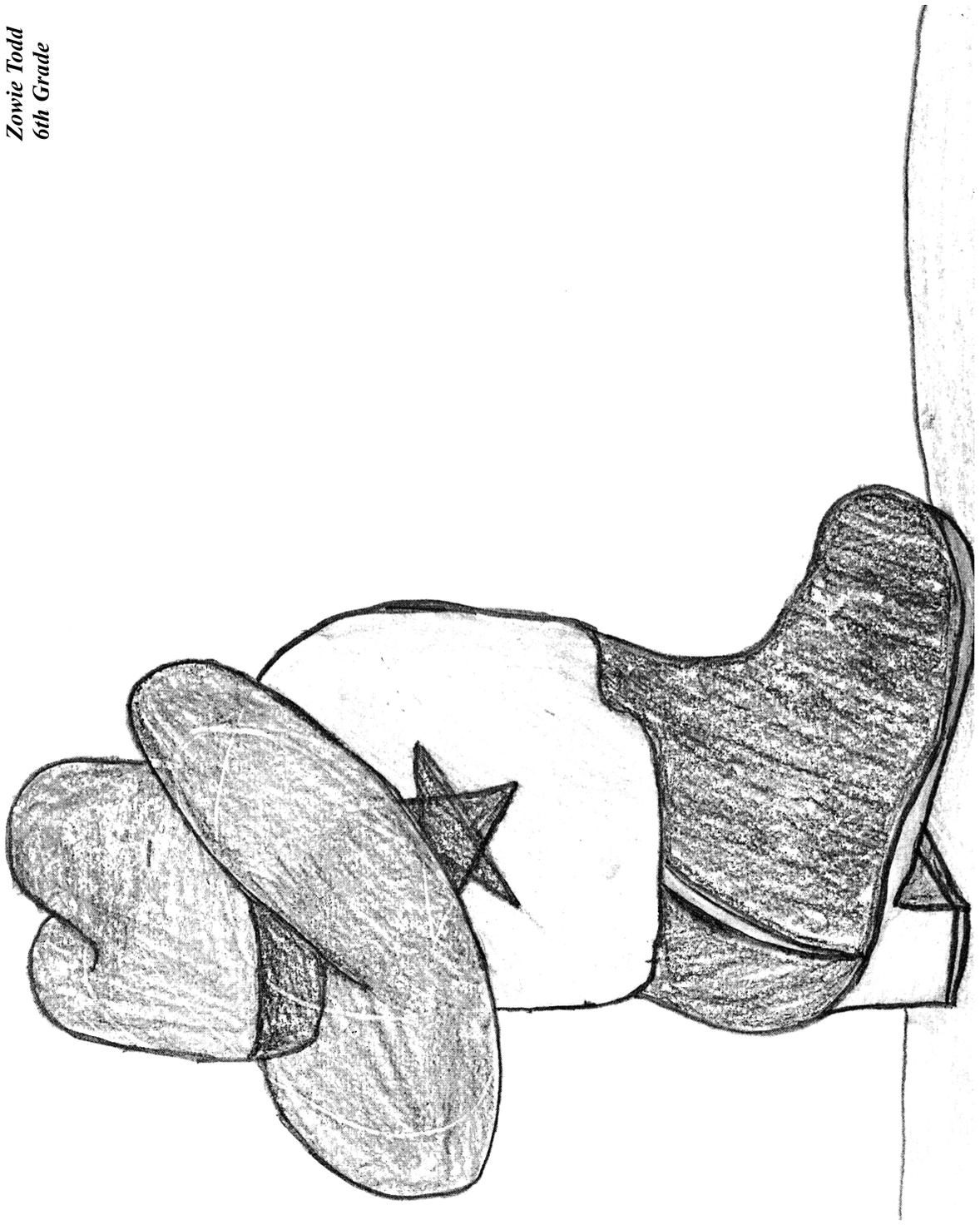
The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201600076  
Natalia Luna Ashley  
Executive Director  
Texas Ethics Commission  
Filed: January 6, 2016



*Zowie Todd  
6th Grade*



# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER A. PURCHASED HEALTH SERVICES

##### DIVISION 33. ADVANCED TELECOMMUNICATIONS SERVICES

###### 1 TAC §354.1432

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1432, concerning Telemedicine and Telehealth Benefits and Limitations.

###### BACKGROUND AND JUSTIFICATION

The proposed rule amendment is a result of House Bill (H.B.) 1878, 84th Legislature, Regular Session, 2015, which clarifies that physicians shall be reimbursed for telemedicine medical services provided in a school-based setting, even if the physician is not the patient's primary care physician, if certain conditions are met. The proposed amendment updates the Medicaid rule for telemedicine services to reflect the additional requirements outlined in the bill.

###### SECTION-BY-SECTION SUMMARY

Proposed §354.1432(1)(D) adds the requirement that parent or legal guardian consent must be obtained before a child receives telemedicine medical services in a primary or secondary school-based setting.

Proposed §354.1432(1)(E) adds the requirement that a patient's primary care physician or provider must be notified of a telemedicine medical visit, as applicable. For example, a patient who is not enrolled in managed care would not have a primary care physician or provider that would need to be notified. This section also requires consent by the patient or the patient's parent or legal guardian to the notification and describes what information must be included in the notification.

Proposed §354.1432(1)(F) adds additional information that the parent or legal guardian of a child receiving telemedicine medical services in a school-based setting must receive if the child is enrolled in managed care but does not have a primary care physician or provider.

Proposed §354.1432(1)(G) adds the requirement that a physician who provides telemedicine medical services to a child is

reimbursed if the physician is enrolled as a Medicaid provider, if the child receiving treatment is in a primary or secondary school-based setting, if a parent or legal guardian provides consent before the service is provided, and if a qualified health care professional is present with the child during treatment.

###### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect, there will be no fiscal impact to state government. Costs and revenues of local governments will not be affected.

###### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amended rule, as they will not be required to alter their business practices as a result of the amended rule.

###### PUBLIC BENEFIT

Gary Jessee, State Medicaid Director, has determined that for each year of the first five years the amended rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit is increased communication with a child's parent/guardian and primary care physician or provider regarding any telemedicine medical services provided to that child in a school-based setting.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the amended rule.

HHSC has determined that the amended rule will not affect a local economy. There is no anticipated negative impact on local employment.

###### REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule that is specifically intended to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

###### TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore,

does not constitute a taking under §2007.043 of the Government Code.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Erin McManus, Policy Analyst, Texas Health and Human Services Commission, P.O. Box 149030, Mail Code H370, Austin, Texas 78714-9030; by fax to (512) 730-7475; or by e-mail to Erin.McManus@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment implements Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

#### §354.1432. *Telemedicine and Telehealth Benefits and Limitations.*

Telemedicine medical services and telehealth services are a benefit under the Texas Medicaid program as provided in this section and are subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission or its designee (HHSC).

(1) Conditions for reimbursement applicable to telemedicine medical services.

(A) The telemedicine medical services must be designated for reimbursement by HHSC. Telemedicine medical services designated for reimbursement include:

- (i) consultations;
- (ii) office or other outpatient visits;
- (iii) psychiatric diagnostic interviews;
- (iv) pharmacologic management;
- (v) psychotherapy; and
- (vi) data transmission.

(B) The services must be provided in compliance with 22 TAC Chapter 174 (relating to Telemedicine).

(C) The patient site must be:

- (i) an established medical site;
- (ii) a state mental health facility; or
- (iii) a state supported living center.

(D) For a child receiving telemedicine medical services in a primary or secondary school-based setting, advance parent or legal guardian consent for a telemedicine medical service must be obtained.

(E) The patient's primary care physician or provider must be notified of a telemedicine medical service, as applicable.

(i) The patient receiving the telemedicine medical service, or the patient's parent or legal guardian, must consent to the notification.

(ii) For a telemedicine medical service provided to a child in a primary or secondary school-based setting, the notification must include a summary of the service, including:

(I) exam findings;

(II) prescribed or administered medications; and

(III) patient instructions.

(F) If a child receiving a telemedicine medical service in a primary or secondary school-based setting does not have a primary care physician or provider, the child's parent or legal guardian must receive:

(i) the information in subparagraph (E)(ii) of this paragraph; and

(ii) a list of primary care physicians or providers from which to select the child's primary care physician or provider.

(G) Telemedicine medical services provided in a school-based setting by a physician, even if the physician is not the patient's primary care physician or provider, are reimbursed if:

(i) the physician is enrolled as a Medicaid provider;

(ii) the patient is a child who receives the service in a primary or secondary school-based setting;

(iii) the parent or legal guardian of the patient provides consent before the service is provided; and

(iv) a health care professional as defined by Texas Government Code §531.0271(a)(1) is present with the patient during the treatment.

(2) Conditions for reimbursement applicable to telehealth services.

(A) The telehealth services must be designated for reimbursement by HHSC. Designated telehealth services will be listed in the Texas Medicaid Provider Procedures Manual.

(B) The services must be provided in compliance with standards established by the respective licensing or certifying board of the professional providing the services.

(C) The patient site must be:

- (i) an established health site;
- (ii) a state mental health facility; or
- (iii) a state supported living center.

(D) The patient site presenter must be readily available for telehealth services. However, if the telehealth services relate only to mental health, a patient site presenter does not have to be readily available except when the patient may be a danger to himself or to others.

(E) Before receiving a telehealth service, the patient must receive an in-person evaluation for the same diagnosis or condition, with the exception of a mental health diagnosis or condition. For a mental health diagnosis or condition, the patient may receive a telehealth service without an in-person evaluation provided the purpose of the initial telehealth appointment is to screen and refer the patient for additional services and the referral is documented in the medical record.

(F) For the continued receipt of a telehealth service, the patient must receive an in-person evaluation at least once during the previous 12 months by a person qualified to determine a need for services.

(G) Both the distant site provider and the patient site presenter must maintain the records created at each site unless the dis-

tant site provider maintains the records in an electronic health record format.

(H) Written telehealth policies and procedures must be maintained and evaluated at least annually by both the distant site provider and the patient site presenter and must address:

(i) patient privacy to assure confidentiality and integrity of patient telehealth services;

(ii) archival and retrieval of patient service records; and

(iii) quality oversight mechanisms.

(3) Conditions for reimbursement applicable to both telemedicine medical services and telehealth services.

(A) Preventive health visits under Texas Health Steps (THSteps), also known as Early and Periodic Screening, Diagnosis and Treatment program, are not reimbursed if performed using telemedicine medical services or telehealth services. Health care or treatment provided using telemedicine medical services or telehealth services after a THSteps preventive health visit for conditions identified during a THSteps preventive health visit may be reimbursed.

(B) Documentation in the patient's medical record for a telemedicine medical service or a telehealth service must be the same as for a comparable in-person evaluation.

(C) Providers of telemedicine medical services and telehealth services must maintain confidentiality of protected health information (PHI) as required by 42 CFR Part 2, 45 CFR Parts 160 and 164, chapters 111 and 159 of the Occupations Code, and other applicable federal and state law.

(D) Providers of telemedicine medical services and telehealth services must comply with the requirements for authorized disclosure of PHI relating to patients in state mental health facilities and residents in state supported living centers, which are included in, but not limited to, 42 CFR Part 2, 45 CFR Parts 160 and 164, Health and Safety Code §611.004, and other applicable federal and state law.

(E) Telemedicine medical services and telehealth services are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600020

Karen Ray  
Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 424-6900



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

##### SUBCHAPTER II. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL ALLOTMENT

The Texas Education Agency (TEA) proposes amendments to §§61.1091, 61.1093, 61.1094, and 61.1099 and the repeal of §61.1100 and §61.1101, concerning the high school allotment for school districts. The sections implement provisions for the administration of high school allotment funds. The proposed amendments and repeals would update the current rules to reflect statutory changes.

The Texas Education Code (TEC), §42.2516(b)(3), added by the 79th Texas Legislature, Third Called Session, 2006, and amended by the 80th Texas Legislature, Regular Session, 2007, provided for an allotment of \$275 for each student in average daily attendance in Grades 9-12 in a school district. This allotment is known as the high school allotment.

The TEC, §39.113, added by the 79th Texas Legislature, Third Called Session, 2006, authorized the commissioner to adopt rules related to the recognition of high school completion and success and college readiness programs. The TEC, §39.114, also added by the 79th Texas Legislature, Third Called Session, 2006, required the commissioner to adopt rules related to permissible uses of the high school allotment.

House Bill (HB) 3, 81st Texas Legislature, 2009, renumbered the TEC, §39.113, as §39.233, and updated statutory references within the section. The bill also renumbered the TEC, §39.114, as §39.234. In addition, the criteria a district must meet to be able to use high school allotment funds on any instructional program in Grades 6-12 other than an athletic program, found in subsection (b) of the new TEC, §39.234, were revised.

The commissioner exercised rulemaking authority to implement the high school allotment by adopting 19 TAC Chapter 61, Subchapter II, Commissioner's Rules Concerning High School Allotment, effective November 9, 2006, and adopted amendments to the rules effective March 3, 2010, in response to actions from the 2006, 2007, and 2009 legislative sessions.

Subsequently, HB 5, 83rd Texas Legislature, 2013, changed graduation requirements, transitioning from three high school graduation programs to one foundation high school program with endorsement options to increase flexibility for students. HB 5 also changed some accountability indicators. The proposed revisions to 19 TAC Chapter 61, Subchapter II, would reflect these statutory changes, as follows.

Section 61.1091, Definitions, would be amended to remove the criteria related to the Distinguished Achievement High School Program.

Section 61.1093, Use of Funds, would be amended to remove options related to the Recommended High School Program and the Distinguished Achievement Program.

Section 61.1094, Exceptions for Alternative Uses of Funds, would be amended to update and specify in rule the eligibility criteria for exceptions for alternative uses of the high school allotment funds.

Section 61.1099, School District Annual Performance Review, would be amended to update the performance indicators that school districts must use to establish annual performance goals to be implemented with high school allotment funds.

Section 61.1100, Evaluation of Programs, would be repealed to minimize duplication of efforts as §61.1099 outlines school district performance review protocols.

Section 61.1101, Standards for Selecting and Methods for Recognizing Districts and Campuses Offering Exceptional Pro-

grams, would be repealed based on the 2015 Sunset Advisory Commission Review Recommendation 4.11 (and TEA's agreement with the recommendation) to eliminate the requirement for TEA to recognize schools' use of high school allotment funds.

The proposed rule actions would have no procedural or reporting implications. The proposed rule actions would have no locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the rule actions are in effect there will be no additional costs for state or local government as a result of enforcing or administering the rule actions.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the rule actions are in effect the public benefit anticipated as a result of enforcing the rule actions will be updated rules that reflect statutory changes. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins January 15, 2016, and ends February 16, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov) or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 15, 2016.

### 19 TAC §§61.1091, 61.1093, 61.1094, 61.1099

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §39.233, which permits the commissioner of education to adopt rules to recognize high school completion and success and college readiness programs; TEC, §39.234, which requires the commissioner to adopt rules related to the permissible use of funds allocated under the annual high school allotment; and TEC, §42.160, which requires the commissioner to adopt rules to administer the annual high school allotment.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§39.233, 39.234, and 42.160.

#### §61.1091. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Academically rigorous course work--Academically rigorous course work is an academically intense and high-quality program of study that provides students with the information and skills necessary to successfully enroll in entry-level courses at an institution of higher education without the need for developmental course work. Academically rigorous coursework includes four years of high school level mathematics and four years of high school level science.

(2) Advanced academic opportunity--An advanced academic opportunity includes the following:

(A) honors courses, such as College Board advanced placement and International Baccalaureate courses, and others as defined in §74.30 of this title (relating to Identification of Honors Courses), with the exception of the Social Studies Advanced Studies;

(B) dual enrollment courses for which students receive both high school and college credit, as limited by §74.25 of this title (relating to High School Credit for College Courses); and

~~[(C) an original research/project as described in §74.54 of this title (relating to Distinguished Achievement High School Program--Advanced High School Program) or by §74.64 of this title (relating to Distinguished Achievement High School Program--Advanced High School Program); and]~~

~~(C) [(D)] advanced technical credit courses.~~

(3) College readiness program--A college readiness program is any program, activity, or strategy designed to do either of the following:

(A) increase the number of students who are academically prepared to enroll in entry-level courses at institutions of higher education without the need for developmental course work; or

(B) increase the number of students who enroll in institutions of higher education.

(4) Developmental course work--As defined in §4.53 of this title (relating to Definitions), developmental course work is non-degree-credit course work designed to address a student's deficiencies.

(5) High school allotment--The high school allotment is the funding allocated under the Texas Education Code (TEC), §42.160.

(6) High school completion and success initiative--A high school completion and success initiative is any program, activity, or strategy designed to do the following:

(A) improve student achievement in high school; and

(B) increase the number of students who graduate from high school.

(7) Institution of higher education--An institution of higher education is any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in the TEC, §61.003.

(8) School district--For the purposes of this subchapter, an open-enrollment charter school is considered a school district.

#### §61.1093. Use of Funds.

In accordance with the Texas Education Code, §39.234(a), high school allotment funds may be spent on the following, which, unless otherwise noted, must be targeted toward Grades 6-12:

(1) programs that provide underachieving students, as defined by local policy, with the following:

(A) instruction in study skills for success in college level work;

(B) academic and community support for success in college preparatory classes;

(C) support to participate in academic competitions; and

(D) information about and access to college and financial aid;

(2) activities designed to increase the number of students who take preparatory college entrance examinations and college entrance examinations;

(3) programs that increase the number of students who enroll and succeed in College Board advanced placement courses and International Baccalaureate courses;

(4) programs that increase the number of students who take College Board advanced placement examinations and International Baccalaureate examinations;

(5) programs that expand participation in dual enrollment or concurrent enrollment courses;

(6) activities designed to increase access for underachieving students to college and financial aid;

(7) activities designed to create a college-going culture within a district or on a campus;

(8) early college high school programs that provide at-risk students and other students with the opportunity to graduate from high school with an associate's degree or 60 hours of credit toward a baccalaureate degree;

~~[(9) programs that provide academic support and instruction to increase the number of students who complete the Recommended High School Program or the Distinguished Achievement Program as defined in Chapter 74, Subchapter E, of this title (relating to Graduation Requirements, Beginning with School Year 2004-2005) or Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008);]~~

~~(9) [(40)] strategies that create small learning communities, advocacy programs, or advisory programs for students;~~

~~(10) [(41)] programs or activities that create individualized high school graduation and postsecondary plans for students;~~

~~(11) [(42)] programs that ensure that students have access to rigorous curriculum, effective instruction, and timely formative assessment;~~

~~(12) [(43)] programs that create opportunities for middle and high school educators and college and university faculty to jointly identify college and secondary curricular requirements and expectations and develop means to align these requirements and expectations;~~

~~(13) [(44)] summer transition programs and other programs that provide academic support and instruction for students entering Grade 9; and~~

~~(14) [(45)] other high school completion and success initiatives as approved by the commissioner of education.~~

*§61.1094. Exceptions for Alternative Uses of Funds.*

In accordance with the Texas Education Code, §39.234(b), ~~[before the beginning of each school year, the commissioner of education will identify] school districts [that] are eligible for exceptions for alternative uses of high school allotment funds that have: [-]~~

~~(1) met or exceeded 95% on the four-year longitudinal graduation rate as reported in Texas Academic Performance Reports (TAPR); and~~

~~(2) achieved a rate of 70% or greater on the "College-Ready Graduates" indicator, as reported in TAPR.~~

*§61.1099. School District Annual Performance Review.*

(a) At an open meeting of the board of trustees, each school district must establish annual performance goals for programs, activities, and strategies implemented with high school allotment funds related to the following performance indicators:

(1) percentage of students graduating from high school;

(2) enrollment in advanced courses, including College Board advanced placement courses, International Baccalaureate courses, and dual or college credit courses; and

~~(3) percentage of "College-Ready Graduates," as defined by §61.1094(2) of this title (relating to Exceptions for Alternative Uses of Funds).~~

~~[(3) percentage of students successfully graduating on the Recommended High School Program or Distinguished Achievement Program described in Chapter 74, Subchapter E, of this title (relating to Graduation Requirements, Beginning with School Year 2004-2005) or Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008);]~~

~~[(4) percentage of students who achieve the higher education readiness component qualifying scores on the English language arts section of the exit-level Texas Assessment of Knowledge and Skills (TAKS); and]~~

~~[(5) percentage of students who achieve the higher education readiness component qualifying scores on the mathematics section of the exit-level TAKS.]~~

(b) Annually, the board of trustees of each school district must review its progress in relation to the performance indicators specified in subsection (a) of this section. Progress should be assessed based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status.

(c) Each school district must ensure that decisions about the continuation or establishment of programs, activities, and strategies implemented with high school allotment funds are based on:

(1) state assessment results and other student performance data;

(2) standards for success and cost-effectiveness as established by the commissioner of education under the Texas Education Code (TEC), §39.233(a)(1); and

(3) guidance for improving high school completion and success and college readiness programs as established by the commissioner under the TEC, §39.233(a)(2).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2015.

TRD-201505985

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 475-1497



**19 TAC §61.1100, §61.1101**

STATUTORY AUTHORITY. The repeals are proposed under the Texas Education Code (TEC), §39.233, which permits the commissioner of education to adopt rules to recognize high school completion and success and college readiness programs; TEC, §39.234, which requires the commissioner to adopt rules related to the permissible use of funds allocated under the annual high school allotment; and TEC, §42.160, which requires the commissioner to adopt rules to administer the annual high school allotment.

CROSS REFERENCE TO STATUTE. The repeals implement the Texas Education Code, §§39.233, 39.234, and 42.160.

§61.1100. *Evaluation of Programs.*

§61.1101. *Standards for Selecting and Methods for Recognizing Districts and Campuses Offering Exceptional Programs.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2015.

TRD-201505986

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 475-1497



## CHAPTER 129. STUDENT ATTENDANCE SUBCHAPTER AA. COMMISSIONER'S RULES

### 19 TAC §129.1029

The Texas Education Agency proposes an amendment to §129.1029, concerning the Optional Flexible Year Program (OFYP). The section implements provisions for the administration of the OFYP. The proposed amendment would modify the rule to reflect changes in statute made by House Bill (HB) 2610, 84th Texas Legislature, 2015.

HB 2610, 84th Texas Legislature, 2015, made changes to the TEC, §25.081, to modify how a school district counts instructional time for the school year by requiring a minimum of 75,600 minutes of instruction, including intermission and recess, instead of the current minimum of 180 days. It also defines one day of instruction to be equal to 420 minutes. The TEC, §25.0812, created by HB 2610, prohibits a school district from scheduling its last day of school for students before May 15.

The TEC, §25.081, currently requires school districts to provide at least 180 days of instruction to students each school year, except if the school district operates on a year-round calendar or offers a flexible year program. The statute allows the commissioner of education to approve a reduced number of instructional days if an extreme weather event or another calamity causes schools to close.

When schools close due to severe weather and the commissioner does not approve reduced instructional days, schools must make up lost instructional days by adding days to the

school calendar and extending the school year into summer. Allowing school districts to count instructional time by minutes instead of days provides for lost instructional time to be added to a regular school day, which permits districts to make up lost time without extending classes into the summer.

In accordance with HB 2610, the commissioner may approve reduced minutes of instruction if certain extreme weather or another calamity causes schools to close. If the commissioner does not approve fewer instructional minutes for a school district, the district may add additional minutes to its normal school hours as necessary, with additional instructional minutes compensating for the time lost due to bad weather or other extraordinary events.

The law also prohibits a school district from scheduling its last day of school for students before May 15, with an exception for the Texhoma Independent School District, which is also subject to Oklahoma law.

The proposed amendment to 19 TAC §129.1029 would incorporate the changes made by HB 2610, as follows.

New subsection (a) would be added to establish definitions for the OFYP and school district.

Subsection (c) would be revised to update program criteria, including the addition of new paragraph (7) to require proposed OFYP instructional time to be scheduled before the last approved student assessment testing window of the school year. The TEC, §29.0821, specifies that this program is available to assist students in meeting promotion requirements. Proposed new paragraph (7) is intended to ensure that additional instruction takes place prior to the final administration of state assessments since these are required for promotion.

Subsection (d) would be revised to update the approval process, including the requirement that a school district submit its instructional calendar that indicates the days and minutes scheduled as OFYP instructional days.

The proposed amendment would require school districts to follow new attendance accounting procedures outlined in the Student Attendance Accounting Handbook (SAAH). The proposed amendment would have no additional locally maintained paperwork documentation beyond the requirements outlined in the OFYP application and the SAAH.

FISCAL NOTE. Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

PUBLIC BENEFIT/COST NOTE. Dr. Dawn-Fisher has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be increased flexibility for school districts to make up lost instructional time without extending classes into the summer. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins January 15, 2016, and ends February 16, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov) or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 15, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §29.0821, which authorizes the commissioner of education to adopt rules necessary for the administration of provisions under the optional flexible year program.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §25.081 and §25.0812, as amended and added by House Bill 2610, 84th Texas Legislature, 2015, and §29.0821.

§129.1029. *Optional Flexible Year Program.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Optional Flexible Year Program (OFYP)--An OFYP is a program authorized under the Texas Education Code (TEC), §29.0821, that is approved by the commissioner of education to provide a flexible year program to meet the educational needs of its students, including providing intensive instructional services. A school district approved by the commissioner of education to implement an OFYP may reduce the number of instructional minutes for certain students.

(2) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

~~[(a) General provisions. In accordance with the Texas Education Code (TEC), §29.0821, a school district may modify its instructional calendar to provide a flexible year program to meet the educational needs of its students, including providing intensive instructional services. A school district approved by the commissioner of education to implement an Optional Flexible Year Program (OFYP) may reduce the number of instructional days for certain students.]~~

(b) Eligibility. A student is eligible to participate in the OFYP if the student meets one or more of the following criteria.

(1) The student did not or is not likely to achieve a passing score on an assessment instrument administered under the TEC, §39.023.

(2) The student is not eligible for promotion to the next grade level.

(c) Program criteria.

(1) A school district may reduce the number of instructional minutes ~~[days]~~ during the regular school year for students who are not eligible for participation in this program to no fewer than 71,400 minutes ~~[170 days]~~.

(2) A school district must provide at least 75,600 minutes ~~[180 days]~~ of instruction to those students who meet the eligibility criteria defined in subsection (b) of this section.

~~[(3) In accordance with subsection (d) of this section, a school district may request waivers for no more than five days of staff development or teacher preparation in order to provide additional days of instruction.]~~

(3) ~~[(4)]~~ A school district that provides transportation services must continue to provide these services during the OFYP.

(4) ~~[(5)]~~ A school district that provides meal services through ~~[participates in]~~ the National School Lunch Program, ~~[or the National]~~ School Breakfast Program, or a locally funded program must continue to provide these services during the OFYP.

(5) ~~[(6)]~~ A school district may require educational support personnel to provide service as necessary for an OFYP.

(6) ~~[(7)]~~ Each educator employed under a ten-month contract must provide the minimum days of service required under the TEC, §21.401, notwithstanding the reduction in the number of instructional days or in the number of staff development days.

(7) A school district must schedule proposed OFYP instructional minutes before the last approved state student assessment testing window of the school year.

(d) Approval process. To implement an OFYP, a school district must request prior approval from the commissioner of education.

(1) A school district must submit a letter to the Texas Education Agency (TEA) division responsible for state funding describing the proposed modifications to the instructional calendar, including a description of the OFYP that will be provided under the TEC, §29.0821. The letter must indicate the date on which the board of trustees approved the modified instructional calendar. If the district is requesting a waiver of staff development days or teacher preparation days, the letter must also indicate that the request to waive staff development days or teacher preparation days has been approved by the campus site-based decision-making committee.

(2) A school district must submit to the TEA a copy of its modified instructional calendar. The instructional calendar must indicate the days and minutes scheduled as OFYP instructional days. No approval will be granted that reduces the number of instructional minutes to fewer than 71,400 minutes.

(3) ~~[(2)]~~ Approval to modify the number of instructional days is limited to one year. Requests for a school district to operate an OFYP for subsequent years must be approved annually. [Extensions may be approved by submitting subsequent applications.]

~~[(3) No approval will be granted that reduces the number of instructional days to fewer than 170 days.]~~

(4) The commissioner may require a school district to provide an evaluation that demonstrates the success of its approach as a condition of approval.

(e) Funding. For a school district that operates an OFYP, the calculation of average daily attendance is modified to reflect the approved instructional calendar. For students placed on a reduced instructional calendar, the reported number of days of instruction used as the divisor in calculating average daily attendance must reflect the reduced number of days ~~[(no fewer than 170)]~~. For eligible students served through the OFYP, the reported number of days of instruction used as the divisor in calculating average daily attendance must reflect the scheduled number of days ~~[(180 or more)]~~ in which instruction took place.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



## CHAPTER 153. SCHOOL DISTRICT PERSONNEL

### SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT

#### 19 TAC §153.1013

The Texas Education Agency (TEA) proposes new §153.1013, concerning suicide prevention training. The proposed new rule would provide a schedule for conducting suicide prevention training to all existing school district and open-enrollment charter school educators, establish when new school district and open-enrollment charter school educators are to be trained, address how previous training can be credited, and describe locally maintained paperwork requirements.

House Bill (HB) 1386, 82nd Texas Legislature, Regular Session, 2011, added the Health and Safety Code (HSC), §161.325, which required the Department of State Health Services (DSHS), in coordination with the TEA, to provide a list of recommended best practice-based suicide prevention programs for implementation in public elementary, junior high, middle, and high schools. The statute provides that each school district may select from the list a program or programs appropriate for implementation in the district.

Senate Bill 460, 83rd Texas Legislature, Regular Session, 2013, amended the HSC, §161.325, to require each school district to provide suicide prevention training for teachers, counselors, principals, and all other appropriate personnel. A school district was required to provide the training at an elementary campus only to the extent that sufficient funding and programs were available. School districts were allowed to implement a program on the list of recommended best practice-based suicide prevention programs to meet the requirements of this legislation. School districts that provided this training were required to train school district employees at least one time and maintain the records of the training to include the name of each employee who participated in training.

HB 2186, 84th Texas Legislature, Regular Session, 2015, amended the TEC, §21.451(d), to require all school districts and open-enrollment charter schools to provide suicide prevention training to all existing educators on a schedule adopted in rule by the TEA. The legislation also requires all new school district and open-enrollment charter school educators to be trained on an annual basis as part of new employee orientation. School districts and open-enrollment charter schools may select training programs from the list of recommended best practice-based programs or they may conduct an independent review of an online program that complies with guidelines developed by the TEA.

Proposed new 19 TAC §153.1013 would require school districts and open-enrollment charter schools to provide suicide prevention training to all new educators as part of new employee orientation during the 2016-2017 school year and each subsequent school year. The proposed new rule would also require that the training be provided to all currently employed educators by September 30, 2016, and allows for training provided to existing educators on or after September 1, 2013, to meet these suicide prevention training requirements under certain conditions.

In accordance with the HSC, §161.325, the proposed new rule would require school districts to continue to maintain records that include the name of each educator who participated in the suicide prevention training. Additionally, the proposed new rule would encourage open-enrollment charter schools to maintain suicide prevention training records that include the name of each educator who participated in the suicide prevention training.

The TEA has posted guidelines for suicide prevention training on its website and informed school districts and open-enrollment charter schools about the new requirements through TEA correspondence on August 26, 2015.

The proposed new rule has no additional procedural and reporting implications. The proposed new rule has no additional locally maintained paperwork requirements because the HSC, §161.325, already requires school districts to maintain records of employees who participate in the required training. Prior to the passage of HB 2186, school districts were required to provide training at elementary school campuses only to the extent that sufficient funding and programs are available. With the passage of HB 2186, there are several programs on the recommended best practice-based list that are offered at no cost and are appropriate for elementary school campuses. Alternatively, school districts may conduct independent reviews of online programs that are offered at no cost and are appropriate for elementary school campuses if the programs comply with guidelines developed by the TEA. Open-enrollment charter schools are encouraged, but not required, to maintain suicide prevention training records that include the name of each educator who participated in the suicide prevention training.

**FISCAL NOTE.** Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the new section is in effect there will be no additional costs for state or local government as a result of enforcing or administering the new section because there are several programs on the recommended best practice-based list that are offered at no cost and school districts and open-enrollment charter schools may conduct independent reviews of online programs that are offered at no cost if the programs comply with guidelines developed by the TEA.

**PUBLIC BENEFIT/COST NOTE.** Mr. Franklin has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be that all school district and open-enrollment charter school educators will be sufficiently trained on best practices for youth suicide prevention. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES.** There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility

analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins January 15, 2016, and ends February 16, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov) or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 15, 2016.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code, §21.451(d), as amended by House Bill 2186, 84th Texas Legislature, Regular Session, 2015, which requires the Texas Education Agency to adopt in rule a schedule by which each school district and open-enrollment charter school will provide suicide prevention training to its educators.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §21.451(d), as amended by House Bill 2186, 84th Texas Legislature, Regular Session, 2015.

§153.1013. Suicide Prevention Training.

(a) All school districts and open-enrollment charter schools shall provide suicide prevention training as required by the Texas Education Code (TEC), §21.451(d), to all new school district and open-enrollment charter school educators as a part of new employee orientation during the 2016-2017 school year.

(b) Each subsequent school year, school districts and open-enrollment charter schools shall provide suicide prevention training as required by the TEC, §21.451(d), to all new school district and open-enrollment charter school educators as a part of new employee orientation.

(c) All school districts and open-enrollment charter schools shall provide suicide prevention training as required by the TEC, §21.451(d), to all currently employed school district and open-enrollment charter school educators on or by September 30, 2016.

(d) Suicide prevention training that is required by the TEC, §21.451(d), and was provided to existing educators by a school district or open-enrollment charter school on or after September 1, 2013, may be used to meet the requirements of this section if the training program is on the recommended best practice-based list maintained by the Department of State Health Services (DSHS), in coordination with the Texas Education Agency (TEA), or is an online program that meets the TEA guidelines for independent review.

(e) In accordance with the Health and Safety Code, §161.325, school districts shall maintain records that include the name of each educator who participated in the suicide prevention training.

(f) Open-enrollment charter schools are encouraged to maintain suicide prevention training records that include the name of each educator who participated in the suicide prevention training.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2015.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



CHAPTER 157. HEARINGS AND APPEALS  
SUBCHAPTER EE. INFORMAL REVIEW,  
FORMAL REVIEW, AND REVIEW BY STATE  
OFFICE OF ADMINISTRATIVE HEARINGS  
DIVISION 1. INFORMAL REVIEW

**19 TAC §157.1123**

The Texas Education Agency (TEA) proposes an amendment to §157.1123, concerning hearings and appeals. The section addresses informal reviews requested by a school district, open-enrollment charter school, or any person who is subject to an investigation, assignment, determination, or decision identified in 19 TAC §157.1121, Applicability. The proposed amendment would modify the rule to increase the ability of an open-enrollment charter school to participate in the TEA's informal review of its investigation of alleged misconduct by the charter.

The TEC, §12.116, requires that the commissioner adopt an informal procedure for revoking the charter of an open-enrollment charter school or reconstituting the governing body of a charter holder. Section 157.1123, Informal Review, implements the requirement by providing an open-enrollment charter school the opportunity for an informal review of an investigation, assignment, determination, or decision identified under 19 TAC §157.1121.

The 84th Texas Legislature, Regular Session, 2015, passed House Bill (HB) 1842, which modified the informal review for certain actions required by the TEC, §12.116(a). The statutory changes require additional procedures for informal reviews of decisions to deny the renewal of a charter under the TEC, §12.1141(c), and decisions to revoke a charter or reconstitute the charter's governing board under the TEC, §12.115(a). The procedures must allow representatives of the charter holder to meet with the commissioner to discuss the commissioner's decision and must allow the charter holder to submit additional information relating to the decision. In addition, in a final decision, the commissioner must provide a written response to any additional information submitted by the charter holder.

The proposed amendment to 19 TAC §157.1123 would implement HB 1842 by making the following changes.

Subsection (c) would be modified to specify that, at the request of an open-enrollment charter school, a TEA representative will meet with representatives of the charter school in person at the TEA headquarters or by telephone if requested by the charter school. In addition, subsection (c) would be amended to state that the meeting is not a contested-case hearing and will not include the examination of any witnesses and that the rules of civil procedure and evidence do not apply.

Subsection (f) would be amended to specify that the commissioner's final decision will provide a written response to any information the charter holder submits at the informal review.

The proposed amendment would have no procedural or reporting implications. The proposed amendment would have no locally maintained paperwork requirements.

**FISCAL NOTE.** Von Byer, general counsel, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

**PUBLIC BENEFIT/COST NOTE.** Mr. Byer has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be ensuring that an open-enrollment charter school that is the subject of an action under the TEC, §12.1141(c) or §12.115(a), is provided an opportunity to participate in the informal review of an investigation, assignment, determination, or decision with regards to that open-enrollment charter school. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES.** There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**REQUEST FOR PUBLIC COMMENT.** The public comment period on the proposal begins January 15, 2016, and ends February 15, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov) or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 15, 2016.

**STATUTORY AUTHORITY.** The amendment is proposed under the Texas Education Code (TEC), §12.1141, which authorizes the commissioner to adopt rules for the procedure and criteria for renewal, denial of renewal, or expiration of a charter of an open-enrollment charter school; TEC, §12.115, which authorizes the commissioner to adopt rules necessary for the administration of the basis for charter revocation and the reconstitution of the charter holder's governing body; and TEC, §12.116, as amended by House Bill 1842, 84th Texas Legislature, Regular Session, 2015, which authorizes the commissioner to adopt an informal procedure to be used for revoking the charter of an open-enrollment charter school or for reconstituting the governing body of the charter holder. The procedure must allow representatives of the charter holder to meet with the commissioner to discuss the commissioner's decision and must allow the charter holder to submit additional information relating to the commissioner's decision. In a final decision, the commissioner must provide a written response to the additional information.

**CROSS REFERENCE TO STATUTE.** The amendment implements the Texas Education Code, §§12.1141; 12.115; and 12.116, as amended by House Bill 1842, 84th Texas Legislature, Regular Session, 2015.

§157.1123. *Informal Review.*

(a) A school district, an open-enrollment charter school, or any person who is subject to an investigation, assignment, determination, or

decision identified in §157.1121 of this title (relating to Applicability) may request, in writing, an informal review under this section.

(b) A written request for informal review must be addressed to the designated Texas Education Agency (TEA) representative. The written request must be received by the TEA representative on or before the deadline identified in the notice issued under §157.1122 of this title (relating to Notice).

(c) A school district, an open-enrollment charter school, or any person requesting the informal review may submit written information to the TEA representative by the deadline set forth in the notice issued under §157.1122 of this title. In addition, the TEA representative may require attendance at a meeting at the TEA headquarters in Austin, Texas, or by telephone, to discuss the findings and/or provide additional information for review. For an informal review of a decision to non-renew the charter of an open-enrollment charter school pursuant to the Texas Education Code (TEC), §12.1141(c), or a decision to revoke the charter of an open-enrollment charter school or reconstitute the governing board of the charter holder under the TEC, §12.115(a), the TEA representative shall, at the request of the open-enrollment charter school, meet with representatives from the open-enrollment charter school at the TEA headquarters in Austin, Texas, or by telephone if requested by the open-enrollment charter school. This meeting is part of the informal review but is not a contested case hearing. The meeting will not include the examination of any witnesses, including TEA staff. The rules of civil procedure and evidence, including rules prohibiting ex parte communications, do not apply.

(d) If no informal review is requested by the deadline, a final report, assignment, determination, or decision may be issued without informal review.

(e) An informal review is not governed by the TEC [Texas Education Code], §7.057, or by the Texas Government Code, Chapter 2001.

(f) Following the informal review by the TEA representative, a final report, assignment, determination, or decision will be issued. The final report, assignment, determination, or decision may include changes or additions to the preliminary report or action, and such modifications are not subject to another informal review procedure. A final report, assignment, determination, or decision issued following an informal review is final and may not be appealed, except as provided by law or rule. For an informal review of a decision to non-renew the charter of an open-enrollment charter school pursuant to the TEC, §12.1141(c), or a decision to revoke the charter of an open-enrollment charter school or reconstitute the governing board of the charter holder under the TEC, §12.115(a), the final decision shall provide a written response to any information the charter holder submits under this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600018

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 475-1497

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## TITLE 22. EXAMINING BOARDS

# PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

## CHAPTER 465. RULES OF PRACTICE

### 22 TAC §465.1

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.1, Definitions. The proposed amendment seeks to clarify certain definitions relevant to Board rule §465.18 and seeks to clarify that forensic psychological services do not include evaluations, proceedings, or hearings under the Individuals with Disabilities Education Act.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701 or via email to [brenda@tsbep.texas.gov](mailto:brenda@tsbep.texas.gov).

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other codes, articles or statutes are affected by this section.

#### §465.1. Definitions.

The following terms have the following meanings:

- (1) "Client" has the same meaning as "patient."
- (2) "Dual Relationship" means a situation where a licensee and another individual have both a professional relationship and a non-professional relationship. Dual relationships include, but are not limited to, personal friendships, business or financial interactions, mutual club or social group activities, family or marital ties, or sexual relationships.
- (3) "Forensic psychological services" are [~~"Forensic psychology" is the provision of psychological~~] services involving courts, legal claims, or the legal system. The provision of forensic psychological services includes any and all preliminary and exploratory services, testing, assessments, evaluations, interviews, examinations, depositions, oral or written reports, live or recorded testimony, or any psychological service provided by a licensee concerning a current or potential legal case at the request of a party or potential party, an attorney for a party, or a court, or any other individual or entity, regardless of whether the licensee ultimately provides a report or testimony that is utilized in a legal proceeding. However, forensic psychological services do not include evaluations, proceedings, or hearings under the Individuals with Disabilities Education Improvement Act (IDEIA). [A person who is the subject of forensic evaluation is not considered to be a patient under these rules.]

(4) "Forensic evaluation" is an evaluation conducted, not for the purpose of providing mental health treatment, but rather at the request of a court, an attorney, or an administrative body including local, state, federal and private disability benefits providers to assist in addressing a forensic referral question. [Additionally, forensic services would include fitness for duty evaluations, psychological evaluations conducted after an employment offer has been made in high risk professions, and risk assessment evaluations of employees as a result of their aggressive or threatening behavior.]

(5) [(4)] "Informed Consent" means the written documented consent of the patient, client and other recipients of psychological services only after the patient, client or other recipient has been made aware of the purpose and nature of the services to be provided, including but not limited to: the specific goals of the services; the procedures to be utilized to deliver the services; possible side effects of the services, if applicable; alternate choices to the services, if applicable; the possible duration of the services; the confidentiality of and relevant limits thereto; all financial policies, including the cost and methods of payment; and any provisions for cancellation of and payments for missed appointments; and right of access of the patient, client or other recipient to the records of the services.

(6) [(5)] "Licensee" means a licensed psychologist, provisionally licensed psychologist, licensed psychological associate, licensed specialist in school psychology, applicants to the Board, and any other individual whom the Board has the authority to discipline under these Rules.

(7) [(6)] "Multiple Relationship" means any relationship between a licensee and another individual involving a professional relationship and a non-professional relationship.

(8) [(7)] "Patient" means a person who consults or is interviewed by a licensee for a diagnosis, evaluation, or treatment of any mental or emotional condition or disorder of that person regardless of whether the patient or some other individual or entity paid for the consultation or interview. However, a person who is the subject of a forensic evaluation is not considered to be a patient under these rules. [except as identified in paragraph (3) of this section, where the subject of forensic evaluation is not considered to be a patient.]

(9) [(8)] "Professional relationship" is any relationship between a licensee and another individual, group or organization in which the licensee delivers psychological services to the individual, group, or organization.

(10) [(9)] "Professional standards" are determined by the Board through its rules, regulations, policies and any other sources adopted by the Board.

(11) [(10)] "Provision of psychological services" means any use by a licensee of his or her education or training in psychology in the context of a professional relationship. Psychological services include, but are not limited to, therapy, diagnosis, testing, assessments, evaluation, treatment, counseling, supervision, consultation, providing forensic opinions, rendering a professional opinion, performing research, or teaching to an individual, group, or organization.

(12) [(11)] "Recognized member of the clergy," as used in §501.004(a)(4) of the Act, means a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, §501(c)(3).

(13) [(12)] "Records" are any information, regardless of the format in which it is maintained, that can be used to document the delivery, progress or results of any psychological services including, but not limited to, data identifying a recipient of services, dates of services, types of services, informed consents, fees and fee schedules, as-

assessments, treatment plans, consultations, session notes, test results, reports, release forms obtained from a client or patient or any other individual or entity, and records concerning a patient or client obtained by the licensee from other sources.

(14) [(13)] "Report" includes any written or oral assessment, recommendation, psychological diagnostic or evaluative statement containing the professional judgment or opinion of a licensee.

(15) [(14)] "Test data" refers to testing materials, test booklets, test forms, test protocols and answer sheets used in psychological testing to generate test results and test reports.

(16) [(15)] "Supervision" refers to direct, systematic professional oversight of individuals who provide psychological services under the authority of a supervising licensee, whereby the supervisor has the responsibility and ability to monitor and control the psychological services provided to ensure the patient's or client's best interests are met and that the public is protected. In the context of psychological training and education, "supervision" also refers to the formal provision of systematic education and training for purposes of licensure or competency that serves to assist individuals with gaining experience and developing the skills necessary for licensure or competent practice in a particular practice area. However, the term "supervision" does not apply to the supervision of purely administrative or employment matters.

(17) [(16)] "Child custody evaluation" has the same meaning as assigned by Tex. Fam. Code Ann. §107.101.

(18) [(17)] "Adoption evaluation" has the same meaning as assigned by Tex. Fam. Code Ann. §107.151.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2015.

TRD-201505989

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 305-7706



## PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

### CHAPTER 681. PROFESSIONAL COUNSELORS

The Texas State Board of Examiners of Professional Counselors (board), proposes amendments to §§681.2, 681.9, 681.12, 681.15, 681.31, 681.41, 681.48, 681.72, 681.81, 681.82, 681.83, 681.91, 681.92, 681.93, 681.102, 681.123, 681.125, 681.141, 681.142, 681.143, 681.161, 681.162, 681.166, 681.202 and 681.251, concerning the licensing and regulation of professional counselors.

#### BACKGROUND AND PURPOSE

The board reviewed its rules to ensure that the rules reflect the current practice of professional counseling and associated policy considerations; to update licensure requirements and standards of practice; to improve spelling, grammar, and draftsmanship of the rules; and to make the rules more accessible and understandable. Additionally, amendments to §681.41 are proposed in response to the passage of House Bill 1449 by the 84th Legislature, Regular Session, 2015.

#### SECTION-BY-SECTION SUMMARY

The following changes are proposed concerning Subchapter A (relating to the Board):

The amendments to §681.2 expand the definition of client and clarify that the LPC Intern must be under supervision.

The amendment to §681.9 clarifies that the board chair or vice chair may authorize changes to committee membership.

The amendment to §681.12 removes one type of circumstance in which the board may deny physical access to board records.

The amendment to §681.15 specifies the conditions under which the application process can exceed the required time period for processing.

The following changes are proposed concerning Subchapter B (relating to Authorized Counseling Methods and Practices):

Amendments to §681.31 modify the authorized counseling methods related to play therapy and assessment.

The following changes are proposed concerning Subchapter C (relating to Code of Ethics):

Amendments to §681.41 relate to general ethical requirements. Specifically, subsection (e) adds that a signed informed consent must be obtained prior to counseling. Subsection (g) requires a face-to-face initial intake session before beginning distance counseling. Subsection (p) of this section clarifies that licensees must take precautions to protect all clients in all counseling settings. Subsection (s) clarifies who must comply with record keeping requirements. Subsection (t) adds the description "Billing terms" and separates the existing subsection and is renumbered for clarity. Subsection (cc) requires licensees to comply with Texas Family Code, Chapter 107, Subchapters D, E, and F concerning Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.

The proposed amendment to §681.48 adds new subsection (c) to require a licensee's legal name appear on the LPC license certificate and renewal card. The rest of the subsection is renumbered accordingly to reflect this addition.

The following changes are proposed concerning Subchapter D (relating to Application Procedures):

The proposed amendment to §681.72 removes extraneous language regarding application material and renumbers the section.

The following changes are proposed concerning Subchapter E (relating to the Academic Requirements for Licensure):

Amendments to §681.81 allow for applicants with a graduate degree or graduate coursework that was awarded or earned more than 10 years prior to the application date to request a waiver of the rule and specifies that the board may require the licensee to comply with additional conditions if a waiver is granted.

Amendments to §681.82 revise subsection (b) to incorporate the revised definition of "clients." Also, a new subsection (c) was

added which provides that an applicant licensed in another state for five years preceding the application will be deemed to have met academic requirements for licensure. The remainder of the section is renumbered accordingly.

Amendments to §681.83(c) add a required course regarding couples, marriage, or families, and the amendment to subsection (e) clarifies that applicants who do not meet the academic requirements for licensure do not have a right to a hearing.

The following are proposed changes concerning Subchapter F (relating to Experience Requirements for Licensure):

The proposed amendment to §681.91 limits the number of supervisory sites an LPC Intern can have at any given time. Existing subsection (i) is deleted to ensure consistency with other rules, and the section is renumbered accordingly to reflect these changes.

Amendments to §681.92(g) incorporate the revised definition of "clients." Amendments to subsection (h) remove redundant language and allow for an intern to obtain extended leave from supervision if approved by their board approved supervisor. Amendments to subsection (k) provide that as of August 1, 2017, excess practicum hours may not count toward experience requirements for licensure, and for applications submitted on or before August 1, 2017, only half of the excess practicum hours counted for experience requirements may be credited towards direct client contact. Subsection (m) is removed as it is stated in renumbered §681.93(g), and the remaining subsections are renumbered accordingly.

Proposed amendments to §681.93(a) increase the amount of time a licensee must hold licensure before the licensee may apply for supervision status, effective June 1, 2016. Amendments to subsection (c) specify the percentage of the continuing education supervision course which must be face-to-face and require that the course be taught by an LPC supervisor. New subsection (d) expands upon and details the type of records a supervisor must keep for each intern. Proposed new subsection (e) requires the supervisor to maintain a summary log regarding supervision accrued by interns. Subsections that follow subsection (e) are renumbered accordingly.

Amendments to renumbered subsection (f) clarify that the supervisor must ensure that the intern complies with all board rules and require the supervisor to review a remediation plan with the LPC Intern and maintain the plan in the LPC Intern's file. Amendments to renumbered subsection (h) require licensees to inform the LPC Intern when their supervisor status is revoked, suspended, or expired and to assist the LPC Intern with finding a new supervisor. Amendments to renumbered subsection (k) specify that supervisory status will be revoked upon a probated suspension, suspension, or revocation of the supervisor's LPC license. Amendments to renumbered subsection (n) allow the board to order supervisors who violate board rules to refund supervision fees to interns.

The following changes are proposed concerning Subchapter G (relating to Licensure Examinations):

The proposed amendment to §681.102 replaces the acronym "ADA" with its full, spelled out title, "Americans with Disabilities Act", for clarification.

The proposed changes concerning Subchapter I (relating to the Regular License Renewal; Inactive and Retirement Status):

The amendment to §681.123 clarifies where the board will send renewal notices.

The amendments to §681.125 state that a licensee shall remain subject to an investigation during a period of inactive status, specify that a former supervisor must pay appropriate fees to obtain supervisor status again, limit the inactive status of an LPC license to a total of 2 years unless the licensee obtains board approval, and require board approval to place a temporary license on inactive status.

The following changes are proposed concerning Subchapter J (relating to Continuing Education Requirements):

The amendment to §681.141(c) clarifies that the continuing education ethics requirement relates to Texas LPC ethics. The amendment to subsection (f) allows for licensees holding supervisor status to obtain 3 hours of continuing education in supervision by attending an applications/supervision committee meeting of the board.

Amendments to §681.142(a) require that 9 hours of the 24 continuing education hours required for all licensees be face-to-face and allows attendance at a complaints committee meeting to count as 3 hours of continuing education credit in ethics. The amendment to subsection (b) allows continuing education to pertain to counseling methods or techniques for couples, families, organizations, or communities.

The amendment to §681.143 allows members of the board to earn continuing education credit for attending committee meetings.

The following are proposed changes concerning Subchapter K (relating to Complaints and Violations):

The amendments to §681.161(e) require an investigator to request a copy of the client's file during an investigation and require the licensee or person subject to the investigation to respond within 15 business days of an executive director's request for a response.

Proposed amendments to §681.162 clarify the circumstances under which a formal hearing may be offered to an applicant whose application for licensure was denied.

Amendments to §681.166 require the board's legal counsel to attend each informal conference.

The following are proposed changes concerning Subchapter M (relating to Schedule of Sanctions):

Amendments to §681.202 clarify certain factors considered in the type of sanction imposed upon a licensee.

The following are proposed changes concerning Subchapter N (relating to Parenting Coordination and Parenting Facilitation):

Proposed amendments to §681.251 reorganize the section to improve clarity and require a licensee acting as a parenting coordinator to inform the parties of the suit about the responsibility of the licensee and the role of the court.

#### FISCAL NOTE

Sarah Faszholz, Interim Executive Director, has determined that for each of the first five years the sections are in effect, there will be no fiscal implications to the state or local governments as a result of enforcing or administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS

For most proposed amendments, Ms. Faszholz has determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to significantly alter their business practices in order to comply with the sections. For proposed amendments regarding distance counseling, small business and micro-businesses may incur economic costs related to maintaining an office or a meeting space in which licensees will meet with clients in person, and businesses' ability to contract with companies that provide only distance counseling may be limited. However, because distance counseling utilizes emerging technology, it is difficult to estimate how the proposed amendments will affect licensees and their businesses.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There may be economic costs to persons who are required to comply with the sections as proposed. These costs are described in the section titled "Small and Micro-Business Economic Impact Analysis." However, the proposal is not expected to affect a local economy or have a negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Faszholz has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the effective licensing and regulation of professional counselors. Specifically, proposed requirements regarding distance counseling are designed to allow licensees to better assess the client using non-verbal cues at the initial session, following which the licensee may determine which method of counseling to use and the frequency of subsequent sessions. The amendments will also allow licensees to better establish the identity of the client, ensure confidentiality during the initial session, use modalities other than talk therapy at the first counseling session, and should the client appear to be a danger to him or herself, keep the client with the licensee until help arrives. Finally, the restructuring of many of the rules should improve comprehension, resulting in fewer legal costs to the state and providers.

#### REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposed rules may be submitted to Sarah Faszholz, Interim Executive Director, Texas State Board of Examiners of Professional Counselors, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to [lpc@dshs.state.tx.us](mailto:lpc@dshs.state.tx.us). When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

## SUBCHAPTER A. THE BOARD

### 22 TAC §§681.2, 681.9, 681.12, 681.15

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

#### §681.2. Definitions.

The following words and terms, as used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Client--An individual, couple, family, group, organization or community [A person] who requests and receives counseling services from a licensee or who has engaged in a therapeutic relationship with a licensee.

(7) - (11) (No change.)

(12) Indirect hours--Time spent in management, consultation, administration or other aspects of counseling service ancillary to direct client contact.

(13) - (15) (No change.)

(16) LPC Intern--A person who holds a temporary license to practice counseling only under supervision.

(17) - (18) (No change.)

#### §681.9. Committees.

(a) - (f) (No change.)

(g) Each committee shall consist of at least one public member and one professional member, unless the board chair or vice chair authorizes otherwise.

#### §681.12. Official Records of the Board.

(a) (No change.)

~~{(b) When a request is unreasonably disruptive to the ongoing business of the office or when the safety of any record is at issue, physical access by inspection may be denied and the requester will be provided the option of receiving duplicate copies at the requester's cost.}~~

~~(b) [(e)]~~ Costs of duplication shall be paid by the requester at the time of or before the duplicated records are sent or given to the requester.

~~(c) [(4)]~~ The rules of procedure for inspection and duplication of public records contained in the Public Information Act, Texas Government Code, Chapter 552, shall apply to requests received by the board.

#### §681.15. Processing Procedures.

Time periods. The board shall comply with the following procedures in processing applications for a license and renewal of a regular license:

(1) - (3) (No change.)

(4) The application process may exceed the time period if good cause is shown for exceeding the time period as determined by the board chair or vice chair.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Glynda Corley

Chair

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## SUBCHAPTER B. AUTHORIZED COUNSELING METHODS AND PRACTICES

### 22 TAC §681.31

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

*§681.31. Counseling Methods and Practices.*

The use of specific methods, techniques, or modalities within the practice of professional counseling is limited to professional counselors appropriately trained and competent in the use of such methods, techniques, or modalities. Authorized counseling methods techniques and modalities may include, but are not restricted to, the following:

(1) - (11) (No change.)

(12) play therapy which utilizes play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors and feelings as a part of the therapist's role in helping children overcome their social, emotional, and behavioral ~~mental~~ issues;

(13) - (15) (No change.)

(16) assessing and appraising, in compliance with §681.43 of this title (relating to Testing), which utilizes formal and informal instruments and procedures, for which the counselor has received appropriate training and supervision, in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental status ~~condition~~, emotional stability, intellectual ability, interests, aptitudes, achievement level and other ~~personal~~ characteristics ~~for a better understanding of human behavior, and~~ for diagnosing mental health disorders; but does not permit the diagnosis of a physical condition or physical disorder;

(17) - (18) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER C. CODE OF ETHICS

### 22 TAC §681.41, §681.48

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

*§681.41. General Ethical Requirements.*

(a) - (d) (No change.)

(e) Regardless of setting, a licensee shall provide counseling only in the context of a professional relationship. Prior to providing services a licensee shall obtain from ~~inform~~ an individual a signed informed consent agreeing to the following: ~~in writing of the following:~~

(1) - (8) (No change.)

(f) (No change.)

(g) Technological means of communication may be used to facilitate the therapeutic counseling process. A licensee shall have a face-to-face initial intake session before beginning a distance counseling relationship. When distance counseling, the licensee must reside in the State of Texas and the client must be a resident of or within the State of Texas with the exception of the military. [Counselors engaging in interactive distance counseling must adhere to each provision of the rules and statutes of the board.]

(h) - (o) (No change.)

(p) The ~~[In individual and group counseling settings, the]~~ licensee shall take reasonable precautions to protect clients ~~[individuals]~~ from physical or emotional harm resulting from interaction within a group or from individual counseling.

(q) For each client, a licensee shall keep accurate records of the signed informed consent, intake assessment, ~~[the]~~ dates of counseling treatment intervention, principal treatment methods, progress notes, treatment plan, and billing information.

(r) (No change.)

(s) Records created by licensees during the scope of their employment by agencies or institutions that maintain client records [educational institutions; by federal, state, or local governmental agencies; or their political subdivisions or programs] are not required to comply with subsections (q) and (r) of this section.

(t) Billing Requirements.

(1) A licensee shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual written agreement.

(2) [(4)] Relationships between a licensee and any other person used by the licensee to provide services to a client shall be so reflected on billing documents.

(3) [(2)] Pursuant to Texas Health and Safety Code, Chapter 611, on the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee shall provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(4) [(3)] A licensee may not knowingly overcharge a client.

(5) [(4)] With the exception of an unkept appointment, a licensee may not submit to a client or a third party a bill for counseling treatment intervention that the licensee knows was not provided or knows was improper, unreasonable, or unnecessary.

(u) [(5)] A licensee shall comply with requirements of Texas Health and Safety Code, Chapters 611 and 181, concerning the release of mental health records and confidential information.

(v) [(6)] Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee shall obtain and review a current copy of the custody agreement or court order, as well as any applicable part of the divorce decree. A licensee shall maintain these documents in the client's record and abide by the documents at all times. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee shall follow the protocol set forth in such federal or state statutes.

(w) [(7)] A licensee shall terminate a professional counseling relationship when it is reasonably clear that the client is not benefiting from the relationship.

(x) [(8)] Upon termination of a relationship if professional counseling is still necessary, the licensee shall take reasonable steps to facilitate the transfer to appropriate care.

(y) [(9)] A licensee shall not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the evaluation that the licensee has not personally interviewed the individual.

(z) [(10)] A licensee shall not knowingly over treat a client.

(aa) [(11)] A licensee shall not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the Act. A licensee shall report to the board knowledge of any unlicensed practice of counseling.

(bb) [(12)] A licensee or an applicant for licensure shall not participate in any way in the falsification of applications for licensure or renewal of license.

(cc) Licensees shall comply with Texas Family Code, Chapter 107, Subchapters D, E, and F concerning Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.

§681.48. *Consumer Information.*

(a) - (b) (No change.)

(c) The legal name of the licensee shall appear on the license certificate and renewal card.

(d) [(e)] A licensee shall not display a license certificate or current renewal card issued by the board which has been reproduced or is expired, suspended, or revoked.

(e) [(d)] A licensee shall not make any alteration on a license certificate or renewal card issued by the board.

(f) [(e)] On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the intern's name shall be followed by the name of the supervisor in the same type size and font.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Chair

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SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §681.72

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.72. *Required Application Materials.*

An applicant for licensure must submit complete application materials and fee including:

(1) [(a)] a [A] general application form; [shall include, but not be limited to:]

[(1) specific information regarding personal data, employment and type of practice, other state licenses and certifications held, felony or misdemeanor convictions, and educational background;]

[(2) a statement that the applicant has read the Act and board rules, and agrees to abide by them;]

[(3) the applicant's permission to the board to seek any information it requires to determine the applicant's qualifications;]

[(4) a statement that the applicant, if issued a license certificate, shall return the license to the board upon the revocation or suspension of the license;]

[(5) a statement that the applicant understands that fees submitted in the licensing process are non-refundable;]

[(6) the applicant's signature and the date of signing;]

(2) [(b)] the [The] practicum documentation form; [shall contain:]

(3) a supervisor agreement form with a current copy of the supervisor's renewal card attached;

~~[(1) the applicant's name;]~~

~~[(2) the name and address of the agency or organization where the practicum was completed;]~~

~~[(3) the name, address, degree, position, and licensure status of the supervisor of the practicum;]~~

~~[(4) inclusive dates of the practicum, the number of clock-hours of practice, the number of academic semester hours awarded, and the name of the school at which the practicum was taken;]~~

~~[(5) the type of setting, the type of clients seen, and the counseling methods practiced;]~~

~~[(6) any evaluation of the counseling skills of the applicant; and]~~

~~[(7) the signature of the supervisor or agency or school official who can formally attest to the applicant's practicum experience.]~~

~~[(e) The supervisor shall submit a supervisory agreement form completed, signed and dated by both the supervisor and the applicant. A current copy of the supervisor's renewal card shall be attached to the agreement form.]~~

~~[(d) The supervised experience documentation form must be completed by the applicant's supervisor and contain:]~~

~~[(1) the name of the applicant;]~~

~~[(2) the name, address, degree, licensure status, and credentials of the applicant's supervisor;]~~

~~[(3) the name and address of the agency or organization where the experience was completed;]~~

~~[(4) the inclusive dates of the supervised experience and the total number of hours of practice;]~~

~~[(5) the number of hours of weekly face-to-face supervision given to the applicant, the total number of supervisory hours received by the applicant in the experience, and the types of supervision used;]~~

~~[(6) the applicant's employment status during supervised experience;]~~

~~[(7) the types of clients seen and counseling methods used;]~~

~~[(8) the supervisor's evaluation of the applicant's counseling skills and competence for independent or private practice; and]~~

~~[(9) a statement that the supervised experience complies with the rules set out in Subchapter F of this chapter (relating to Experience Requirements for Licensure) and §681.73 of this title (relating to Application for Art Therapy Specialty Designation).]~~

~~(4) [(e)] graduate [Graduate] transcripts[: An applicant must have the official transcript(s) showing all relevant graduate work] sent directly to the board from the school(s), either by mail or e-transcript, where the applicant obtained the course work or an official transcript may be attached to the application in a sealed envelope from the college or university;[:]~~

~~(5) [(f)] [An applicant must submit] examination results from the National Board of Certified Counselors verifying a passing score on the National Counselor Exam [along with proof of completion of the Texas Jurisprudence Exam]. The National Counselor Exam must have been taken no more than five years prior to the date of application. If applying by reciprocity, the five year limit does not apply.~~

~~[The Texas Jurisprudence Exam must have been taken no more than two years prior to the date of application.]~~

~~(6) proof of completing the Texas jurisprudence exam within two years; and~~

~~(7) the supervised experience documentation form if applying from another jurisdiction.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER E. ACADEMIC REQUIREMENTS FOR LICENSURE

### 22 TAC §§681.81 - 681.83

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

#### §681.81. General.

(a) - (g) (No change.)

(h) A graduate degree and graduate coursework that was awarded or earned more than 10 years prior to the application date may not be used to fulfill the requirements for licensure unless the applicant has held a license issued by another state, ~~or~~ has been counseling in Texas in an exempt setting for at least five years prior to the application date or the board waives this provision. If the board waives this provision, it may require the applicant to comply with additional conditions.

#### §681.82. Academic Requirements.

(a) (No change.)

(b) The 48/60 semester hours must be designed to train a person to provide direct services to assist clients ~~[individuals or groups]~~ in a professional counseling relationship using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(1) - (2) (No change.)

(c) If an applicant has been licensed as a professional counselor in a United States jurisdiction for the 5 years preceding the application, the academic requirements (including the practicum) will be considered to have been met. If licensed for any other period of 5 years, the board will determine whether academic requirements have been met.

(d) [(e)] Applicants must also have a supervised practicum experience that is primarily counseling in nature of at least 300 clock-hours which were a part of the required planned graduate program.

(1) At least 100 hours of the practicum must be direct client counseling contact.

(2) Academic credit or other acknowledgment of the practicum/internship must appear on the applicant's official graduate transcript.

(3) No practicum course intended primarily for practice in the administration and grading of appraisal or assessment instruments shall count toward the 300 clock-hour requirement.

§681.83. *Academic Course Content.*

(a) - (b) (No change.)

(c) As of August 1, 2017, the following courses to meet the 60 hour requirement shall include:

(1) - (2) (No change.)

(3) couples, marriage, or families; and

(4) [(3)] a course in psychopathology to include such content as criteria of psychiatric diagnosis, use of the current Diagnostic and Statistical Manual of Mental Disorders and the theories of psychopathology. The course should also include the basic knowledge of types of psychopharmacological medications. [Additional courses may also include:]

[(A) crisis counseling;]

[(B) couples, marriage, families, or parenting.]

(d) Passing the National Counselor Exam does not guarantee that Texas state licensure requirements have been satisfied.

(e) An applicant does not have the right to a hearing if his or her application for licensure is denied based on the applicant's failure to meet academic requirements.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE

### 22 TAC §§681.91 - 681.93

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

#### §681.91. *Temporary License.*

(a) - (d) (No change.)

(e) An LPC Intern may have no more than 5 sites at any given time.

(f) [(e)] An LPC Intern must maintain a temporary license during his or her supervised experience.

(g) [(f)] An LPC Intern license will expire 60 months from the date of issuance.

(h) [(g)] An LPC intern who does not complete the required supervised experience hours during the 60-month time period must reapply for licensure. The person may obtain a new license by complying with the current requirements and procedures for obtaining an original license, including examination requirements.

(i) [(h)] Applicants who previously held licensure in Texas must reapply under requirements in place at the time of application.

[(i) Applicants who have completed the supervised experience and who have not passed the NCE at the time of application are not eligible for an initial or an additional temporary license. Such applicants may obtain a regular license by taking and passing the NCE.]

(j) - (l) (No change.)

#### §681.92. *Experience Requirements (Internship).*

(a) - (f) (No change.)

(g) The experience must consist primarily of the provision of direct counseling services within a professional relationship to clients [individuals, families, couples, or groups] by using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(h) The LPC Intern must receive direct supervision consisting of a minimum of four hours per month of face-to-face or live Internet webcam supervision in individual (up to two Interns) or group (three or more) settings while [for each week] the intern is engaged in counseling unless an extended leave of one month or more is approved in writing by the board approved supervisor. No more than 50% of the total hours of supervision can be live Internet webcam supervision and no more than 50% of the total hours of supervision may be received in group supervision. [No more than 50% of the total hours of group supervision may be live Internet webcam supervision.]

(i) - (j) (No change.)

(k) For applications submitted on or before August 1, 2017, the [The] board may count excess practicum hours earned toward the experience requirements of this subchapter if:

(1) - (2) (No change.)

(3) no more than 400 hours can be counted for excess practicum with no more than half of the excessive practicum hours being counted as direct client contact.

(l) (No change.)

[(m) Experience received under a supervisor who is a licensee subject to a board disciplinary order shall not qualify as supervised experience for licensure purposes.]

(m) [(n)] A supervisor must submit the change of supervision form into the board office for approval before commencing supervision at a new site or with a new supervisor. Without an approved supervision form on file with the board supervised hours may not be counted toward licensure.

(n) [(o)] To upgrade from the LPC Intern status to full LPC, an LPC Intern must submit the supervised experience documentation form, proof of passing the Texas Jurisprudence exam within two years prior to upgrade and the upgrade fee if applicable.

§681.93. *Supervisor Requirements.*

(a) All internships physically occurring in the State of Texas must be completed under the supervision of a board approved supervisor. The applicant for supervisor status must have held the regular license in good standing for at least 60 [36] months from the date of issuance as of June 1, 2016. Prior to June 1, 2016, the applicant for supervisor status must have held the regular license in good standing for 36 months.

(b) (No change.)

(c) A supervisor under this section must have met the following requirements.

(1) A licensee seeking approval to be a supervisor must meet the requirements of subsection (a) of this section, successfully complete 40 clock-hours of training in the supervision of professional counseling or mental health services as set forth in this subsection; and shall submit a \$100 processing fee. Application for supervision status must be submitted within 2 years of completing the 40-hour supervision course or within 5 years of completing a doctoral level supervision course from an accredited university. The initial supervisor approval will expire on the day the licensee's regular license next expires. Renewal of supervisor approval will begin and expire on the same dates as for the regular license. A renewal application must be filed with the board, accompanied by a \$100 renewal processing fee. The 40 clock-hours of training shall be met through the following:

(A) (No change.)

(B) continuing education programs meeting the requirements of §681.142 of this title (relating to Types of Acceptable Continuing Education) of which 50% of the hours must be face-to-face instruction. The course must be taught by an LPC with supervisor status.

(2) - (3) (No change.)

(d) A supervisor shall keep a written record of each supervisory session in the file of the intern.

(1) The supervisory written record shall contain:

(A) fees and record of payment;

(B) the date and length of each supervisory session;

(C) the topics that were discussed during each supervisory session;

(D) identification of each supervisory session as an individual or a group session and interns who are in attendance;

(E) identification of each supervisory session as being conducted face-to-face or by live internet webcam;

(F) a record of any concerns the supervisor discussed with the intern; and

(G) current board approved site or sites.

(2) Records shall be kept 5 years past the last date of supervision.

(e) The supervisor must maintain a summary log of the indirect, direct, and supervision hours accrued by an intern in each week and a brief summary of the supervisory session. This log must be dated and initialed by both the supervisor and the intern.

[(d)] A board approved supervisor shall maintain and sign a record(s) to document the date of each supervision conference and document the LPC Intern's total number of hours of supervised experience accumulated up to the date of the conference. The record shall reflect the approved site where the hours were accrued and the content of the supervision.]

(f) [(e)] The full professional responsibility for the counseling activities of an LPC Intern shall rest with the intern's board approved supervisor(s). If the LPC Intern receives disciplinary action by the board, the supervisor may also be subject to disciplinary action.

(1) The supervisor shall ensure that the LPC Intern is aware of and adheres to board rules found in this chapter [Subchapter C of this chapter (relating to Code of Ethics)].

(2) A [a] relationship between the supervisor and the LPC Intern that impairs the supervisor's objective, professional judgment shall be avoided.

(3) A supervisor may not be related within the second degree by affinity or within the third degree by consanguinity to the LPC Intern.

(4) If a supervisor determines that the LPC Intern may not have the counseling skills or competence to practice professional counseling under a regular license, the supervisor shall develop and implement a written plan for remediation of the LPC Intern which shall be reviewed and signed by the LPC Intern and maintained as part of the LPC Intern's file.

(5) A supervisor shall submit accurate documentation of supervised experience to the board within 30 days of completion of hours.

(6) It is the responsibility of the board approved supervisor to ensure the supervised hours of the LPC Intern were:

(A) earned after the temporary license was issued; and

(B) in not less than 18 months.

(g) [(f)] A supervisor whose license is expired, revoked or suspended is no longer an approved supervisor and hours accumulated under that person's supervision after expiration, revocation or suspension may not count as acceptable hours.

(h) [(g)] When a licensee's authority to supervise is revoked, suspended or expired, the licensee [A supervisor who becomes subject to a board disciplinary order is no longer an approved supervisor. The person] shall immediately inform all LPC Interns under their supervision of the board disciplinary order if applicable, and assist the LPC Interns in finding alternate supervision.

(i) [(h)] A supervisor may not be an employee of an LPC Intern.

(j) [(i)] The LPC Intern may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(k) [(j)] Upon a probated suspension, suspension or revocation of the LPC license, supervisory [Supervisory] status shall [may] be denied, revoked, or suspended [following a fair hearing for violation of the Act or rules. The fair hearing will be conducted under the fair hearing rules of the Department of State Health Services].

(l) [(k)] A supervisor whose supervisory status has expired may be required to refund all supervisory fees received after the expiration of the supervisory status to the intern(s) who paid the fees.

(m) [(4)] Supervision of the intern without being approved as a supervisor or after expiration of the supervisor status may be grounds for disciplinary action.

(n) [(m)] Supervisors who are in violation of board rules may be subject to an administrative penalty of up to \$5,000 per day depending on the level of severity and/or be required to refund all or a portion of the fees received by the supervisor to the intern.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Chair

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## SUBCHAPTER G. LICENSURE EXAMINATIONS

### 22 TAC §681.102

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.102. *Notice of Results.*

(a) (No change.)

(b) Non-electronically administered examinations may be requested as an Americans with Disabilities Act [ADA] accommodation; however, grading will not be immediately available upon completion of the examination.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS

### 22 TAC §681.123, §681.125

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.123. *License Renewal.*

(a) At least 30 days prior to the expiration of a regular license the board will send notice to the licensee at the [a licensee's] last known address that includes the expiration date of the license and instructions for renewing the license.

(b) - (e) (No change.)

§681.125. *Inactive Status.*

(a) - (c) (No change.)

(d) A person shall [may] remain subject to investigation and action under Subchapter K of this chapter (relating to Complaints and Violations) during the period of inactive status.

(e) - (f) (No change.)

(g) A person previously approved as a supervisor whose supervisor status has expired for 2 or more years or been inactive for 2 or more years and who wishes to resume the supervisor status or active license status may become a supervisor by again completing a board approved 40 hour supervisor course or equivalent and paying appropriate fees.

(h) The licensee may only remain on inactive status for 2 years or less. To remain on inactive status for longer than the 2 year period of time the licensee must obtain board approval.

(i) A temporary license cannot be placed on inactive status without prior board approval.

[(h) The licensee must renew the inactive status every two years.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER J. CONTINUING EDUCATION REQUIREMENTS

### 22 TAC §§681.141 - 681.143

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under

the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.141. *General.*

(a) - (b) (No change.)

(c) A licensee must complete at least four hours of continuing education directly related to Texas LPC [counselor] ethics [issues] each renewal period. Completion of the Texas Jurisprudence Exam will count as one hour of continuing education in counselor ethics.

(d) - (e) (No change.)

(f) A licensee holding the supervisor status must complete 6 hours of continuing education in supervision every 2 [two] years. Three hours may be obtained by attending 3 hours or more of an applications/supervision committee meeting of the board.

§681.142. *Types of Acceptable Continuing Education.*

(a) Acceptable continuing education may include:

(1) - (3) (No change.)

(4) completion of an independent study program directly related to counseling and approved or offered by a nationally recognized professional organization in the mental health field or its state equivalent, approved or offered by an accredited college or university, or approved or offered by a board approved continuing education provider. Nine hours of the 24 required must be face-to-face;

(5) (No change.)

(6) attendees [attendee] at a complaints committee meeting of the board who are not [without being] a respondent [to] or complainant involved in a complaint may receive 3 hours of ethics credit. The hours obtained can be used for either ethics or supervision credit.

(b) Continuing education must fall within these approved content areas:

(1) - (4) (No change.)

(5) counseling methods or techniques;

(A) counseling individuals; ~~and~~

(B) groups; or

(C) couples, families, organizations or communities;

(6) - (10) (No change.)

§681.143. *Activities Unacceptable as Continuing Education.*

The board shall not give continuing education credit to a licensee for:

(1) (No change.)

(2) organizational activity such as serving as an officer in a professional organization or on committees or councils other than committees of the board [or as an officer in a professional organization];

(3) - (5) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER K. COMPLAINTS AND VIOLATIONS

### 22 TAC §§681.161, 681.162, 681.166

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.161. *Complaint Procedures.*

(a) - (d) (No change.)

(e) The executive director initially reviews the complaint to determine jurisdiction. If a complaint appears to be within the board's jurisdiction, the executive director shall decide whether to authorize sending a copy of the complaint to the respondent and requesting a response. If an investigation is conducted the investigator shall request a copy of the client's entire record. If a response is requested the licensee or person against whom an alleged violation has been filed must respond within 15 business days of the executive director's request.; which may include but not be limited to requesting that a copy of the client's records be attached to the response. If the executive director does not authorize written notification of the respondent, the complaint will be referred for an investigation and the assigned investigator will determine whether the respondent will be notified by letter, phone call, site visit, or some other appropriate means. If the complaint is against a person licensed by another board, the department staff will forward the complaint to that board not later than the 15th day after the date the agency determines that the information shall be referred to the appropriate agency as provided in Government Code, Chapter 774, relating to exchange of information between regulatory agencies.

(f) - (j) (No change.)

§681.162. *Disciplinary Action; Notices.*

(a) - (b) (No change.)

(c) If denial based on subsection (a) of this section, revocation, or suspension of a license is proposed, the board shall give written notice of the basis for the proposal and state that the licensee or applicant must request, in writing, a formal hearing within 15 working days of receipt of the notice, or the right to a hearing shall be waived and the license shall be denied, revoked, or suspended.

(d) - (e) (No change.)

§681.166. *Informal Disposition.*

(a) - (h) (No change.)

(i) The board's legal counsel shall [may] attend each informal conference. The complaints committee member or executive director may call upon the attorney at any time for assistance in the informal conference.

(j) - (v) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER M. SCHEDULE OF SANCTIONS

### 22 TAC §681.202

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

#### §681.202. Relevant Factors.

When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which includes: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the complaints committee or the administrative law judge. Specific factors are to be considered as set forth in paragraphs (1) - (5) of this section.

(1) - (4) (No change.)

(5) Miscellaneous Factors. The following factors are identified:

(A) age and experience of the licensee at time of violation;

(B) presence or absence of prior or subsequent violations committed by the licensee;

(C) - (E) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER N. PARENTING COORDINATION AND PARENTING FACILITATION

### 22 TAC §681.251

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

#### §681.251. Parenting Coordination.

(a) (No change.)

(b) A licensee, who serves as a parenting coordinator, has a duty to provide the following information in writing to the parties of the suit about the responsibility of the licensee and the role of the appointed court.

(1) [~~(b)~~] A licensee, who serves as a parenting coordinator, is not acting under the authority of a license issued by the board and is not engaged in the practice of professional counseling. The services provided by the licensee who serves as a parenting coordinator are not within the jurisdiction of the board, but rather the jurisdiction of the appointing court.

(c) ~~A licensee, who serves as a parenting coordinator, has a duty to provide the information in subsection (b) of this section to the parties to the suit.~~

(2) [~~(d)~~] Records of a licensee serving as a parenting coordinator are confidential under Civil Practice and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator shall comply with the Civil Practice and Remedies Code, Chapter 154, relating to the release of information.

(3) [~~(e)~~] A licensee shall not provide professional counseling services to any person while simultaneously providing parenting coordination services. This section shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

## CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§19.101, 19.204, 19.1911, and 19.1921 and new §19.1936, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

### BACKGROUND AND PURPOSE

The purpose of the amendments and the new section is to implement §242.019, Texas Health and Safety Code (THSC), as added by House Bill (H.B.) 1337 of the 84th Legislature, Regular Session, 2015, regarding Guardianship Orders, and changes to §242.202(d) and §242.040, THSC, as added by H.B. 2588 of the 84th Legislature, Regular Session, 2015, regarding Alzheimer's Disclosure.

The proposal specifies the process a nursing facility (facility) must follow to request a copy of any court order and letters of guardianship appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support and requires a facility to maintain a copy of the current court order and letters of guardianship appointing a guardian of a resident or resident's estate that the facility receives in response to a request in the resident's clinical records.

The proposal defines the term "Alzheimer's disease and related disorders" and requires a facility to include in the facility's Alzheimer's disclosure statement whether the facility is certified under THSC, §242.040, for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders. A facility must notify DADS before updating the information in the disclosure statement. The proposal also states when and to whom a facility must provide the disclosure statement.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §19.101 adds a definition for "Alzheimer's disease and related disorders."

The proposed amendment to §19.204 requires a facility's Alzheimer's disclosure statement to include information whether the facility is certified under THSC, §242.040, for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders, and requires a facility to notify DADS 30 days before making changes to the information required in the statement.

The proposed amendment to §19.1911 requires a facility to include a copy of the current court order and letters of guardianship appointing a guardian of a resident or a resident's estate received in response to a request made in accordance with §19.1936 in the resident's clinical record.

The proposed amendment to §19.1921 reorganizes for clarity subsection (f) regarding the Alzheimer's disease and related disorders disclosure statement requirement and adds that a facility must provide an updated disclosure statement to a resident, resident's responsible party, or legal guardian 30 days before the update is effective.

The proposed new §19.1936 requires a facility to request a copy of any current court order appointing a guardian and letters of guardianship for a resident or a resident's estate when a facility

admits an individual and when the facility becomes aware that a resident has a guardian. A facility must request an updated copy of court orders and letters of guardianship at each annual assessment. A facility must make at least one follow-up request within 30 days after a request if the facility does not receive a copy of the court orders and letters of guardianship or a response that there are no such documents. The facility must keep in the clinical records documentation of the results of a request and a copy of the current court order and letters of guardianship received.

### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed rules are in effect, enforcing or administering the amendments and new section does not have foreseeable implications relating to costs or revenues of state or local governments.

### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed rules will not have an adverse economic effect on small businesses or micro-businesses because there is no cost to an NF to comply with the proposed rules.

### PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments and new section are in effect, the public benefit expected as a result of enforcing the amendments and new section is there will be clear communication to guardians about a resident's care and allegations of abuse, neglect, or exploitation. The public also will benefit from the adoption of a standard definition of Alzheimer's disease and related disorders and the requirement for a facility to disclose whether it is certified by DADS to provide specialized care and treatment of residents with Alzheimer's disease and related disorders.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new section. The amendment and new section will not affect a local economy.

### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sharon Wallace at (210) 619-8292 in DADS Long Term Care Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R11, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment

period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R11" in the subject line.

## SUBCHAPTER B. DEFINITIONS

### 40 TAC §19.101

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS and Texas Health and Safety Code (THSC), §242.037, which authorizes rules for licensing of nursing facilities.

The amendment implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021; and THSC, §242.040.

#### §19.101. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Penal Code §21.08 (indecent exposure) or Penal Code Chapter 22 (assaultive offenses), sexual harassment, sexual coercion, or sexual assault.

(2) Act--Chapter 242 of the Texas Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.

(4) Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this chapter (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--Licensed nursing facility administrator.

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Affiliate--With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, which includes each:

(i) person's spouse;

(ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(9) Agent--An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(10) Alzheimer's disease and related disorders--Cognitive disorders as described by the Centers for Disease Control and Prevention (CDC) or as found in the most current volume of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(11) [(10)] Applicant--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.

(12) [(11)] APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(13) [(12)] Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

(14) [(13)] Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(15) [(14)] Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, face shields, and protective clothing for purposes of infection control.

(16) [(15)] Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(17) [(16)] Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid or Medicare programs.

(18) [(17)] CFR--Code of Federal Regulations.

(19) [(18)] CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(20) [(19)] Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(21) [(20)] Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(22) [(21)] Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(23) [(22)] Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this chapter (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and

(D) assisting in the development of appropriate coping mechanisms.

(24) [(23)] Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(25) [(24)] Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(26) [(25)] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(27) [(26)] DADS--The Department of Aging and Disability Services.

(28) [(27)] Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(29) [(28)] Dentist--A practitioner licensed by the Texas State Board of Dental Examiners.

(30) [(29)] Department--Department of Aging and Disability Services.

(31) [(30)] DHS--This term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(32) [(31)] Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(33) [(32)] Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

- (A) assessment of the resident's health care status;
- (B) planning for the resident's care;
- (C) assignment of duties to achieve the resident's care;
- (D) nursing intervention; and
- (E) evaluation and change of approaches as necessary.

(34) [(33)] Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(35) [(34)] Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the body of man; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(36) [(35)] Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(37) [(36)] Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(38) [(37)] Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(39) [(38)] Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(40) [(39)] Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood and all body fluids when it is difficult or impossible to differentiate between body fluids.

(41) [(40)] Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(42) [(41)] Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(43) [(42)] Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(44) [(43)] Fiduciary agent--An individual who holds in trust another's monies.

(45) [(44)] Free choice--Unrestricted right to choose a qualified provider of services.

(46) [(45)] Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(47) [(46)] Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(48) [(47)] HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

(49) [(48)] Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(50) [(49)] Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

(51) [(50)] HIV--Human Immunodeficiency Virus.

(52) [(51)] Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(53) [(52)] Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(54) [(53)] Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(55) [(54)] Interdisciplinary care plan--See the definition of "comprehensive care plan."

(56) [(55)] Involuntary seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room, against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not exceed to 24 hours, until professional staff can develop a plan of care to meet the resident's needs.

(57) [(56)] IV--Intravenous.

(58) [(57)] Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(59) [(58)] Licensed health professional--A physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(60) [(59)] Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with Chapter 18 of this title (relating to Nursing Facility Administrators).

(61) [(60)] Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(62) [(61)] Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(63) [(62)] Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(64) [(63)] Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this chapter (relating to Advance Directives)).

(65) [(64)] Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(66) [(65)] Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(67) [(66)] Long-term care-regulatory--DADS Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(68) [(67)] Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(69) [(68)] Management services--Services provided under contract between the owner of a facility and a person to provide for the

operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(70) [(69)] MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(71) [(70)] MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(72) [(71)] Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(73) [(72)] Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(74) [(73)] Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(75) [(74)] Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(76) [(75)] Medical necessity (MN)--The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need. A group of health care professionals employed or contracted by the state Medicaid claims administrator contracted with HHSC makes individual determinations of medical necessity regarding nursing facility care. These health care professionals consist of physicians and registered nurses.

(77) [(76)] Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(78) [(77)] Medical-social care plan--See Interdisciplinary Care Plan.

(79) [(78)] Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(80) [(79)] Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(81) [(80)] Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(82) [(81)] Neglect--The failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness.

(83) [(82)] NHIC--This term referred to the National Heritage Insurance Corporation. It now refers to the state Medicaid claims administrator.

(84) [(83)] Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

(85) [(84)] Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(86) [(85)] Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(87) [(86)] Nurse practitioner--A person licensed by the Texas Board of Nursing as a registered professional nurse, authorized by the Texas Board of Nursing as an advanced practice nurse in the role of nurse practitioner.

(88) [(87)] Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(89) [(88)] Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(90) [(89)] Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to licensure under Texas Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(91) [(90)] Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(92) [(91)] Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(93) [(92)] Objectives--See definition of "goals."

(94) [(93)] OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

(95) [(94)] Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.

(96) [(95)] Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(97) [(96)] Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(98) [(97)] PASARR or PASRR--Preadmission Screening and Resident Review.

(99) [(98)] Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(100) [(99)] Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(101) [(100)] Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(102) [(101)] Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.

(103) [(102)] Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist.

(104) [(103)] Physical restraint--See Restraints (physical).

(105) [(104)] Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board.

(106) [(105)] Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association;

(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has

been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

(107) [(106)] Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(108) [(107)] Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(109) [(108)] Practitioner--A physician, podiatrist, dentist, or an advanced practice nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(110) [(109)] PRN (pro re nata)--As needed.

(111) [(110)] Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(112) [(111)] Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(113) [(112)] Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(114) [(113)] Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(115) [(114)] Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS Regulatory Services Division.

(116) [(115)] Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(117) [(116)] Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a Registered Nurse in the State of Texas.

(118) [(117)] Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(119) [(118)] Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(120) [(119)] Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(121) [(120)] Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(122) [(124)] Resident--Any individual residing in a nursing facility.

(123) [(122)] Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medicare & Medicaid Services (CMS); utilization guidelines; and Care Area Assessment (CAA) process.

(124) [(123)] Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;

(C) participate in educational activities; or

(D) for any other purpose.

(125) [(124)] Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(126) [(125)] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(127) [(126)] Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(128) [(127)] Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(129) [(128)] RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(130) [(129)] RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(131) [(130)] Secretary--Secretary of the U.S. Department of Health and Human Services.

(132) [(131)] Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis

include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(133) [(132)] SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(134) [(133)] Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(135) [(134)] Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(136) [(135)] Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(137) [(136)] State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(138) [(137)] State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(139) [(138)] State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(140) [(139)] Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of a nurse practitioner providing services in a nursing facility.

(141) [(140)] Supervision--General supervision, unless otherwise identified.

(142) [(141)] Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(143) [(142)] Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the qualified person providing the supervision.

(144) [(143)] Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing

the function or activity. The person being supervised must have access to the qualified person providing the supervision.

(145) [(144)] *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The Texas Register was established by the Administrative Procedure and Texas Register Act of 1975.

(146) [(145)] Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(147) [(146)] Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(148) [(147)] Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(149) [(148)] Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(150) [(149)] Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(151) [(150)] Title XVIII--Medicare provisions of the Social Security Act.

(152) [(151)] Title XIX--Medicaid provisions of the Social Security Act.

(153) [(152)] Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(154) [(153)] UAR--HHSC's Utilization and Assessment Review Section.

(155) [(154)] Uniform data set--See Resident Assessment Instrument (RAI).

(156) [(155)] Universal precautions--The use of barrier and other precautions to prevent the spread of blood-borne diseases.

(157) [(156)] Unreasonable confinement--Involuntary seclusion.

(158) [(157)] Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(159) [(158)] Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(160) [(159)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (210) 619-8292

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**SUBCHAPTER C. NURSING FACILITY  
LICENSURE APPLICATION PROCESS**

**40 TAC §19.204**

**STATUTORY AUTHORITY**

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code (THSC), §242.037, which authorizes rules for licensing of nursing facilities.

The amendment implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and THSC, §242.202(d).

§19.204. *Application Requirements.*

(a) Applications. All applications must be made on forms prescribed by and available from DADS.

(1) Each application must be completed in accordance with DADS instructions, and it must be signed and notarized.

(2) Changes to information required in the application must be reported to DADS, as required by §19.1918 of this title (relating to Disclosure of Ownership).

(b) General information required. An applicant must file with DADS an application which contains:

(1) for initial applications and change of ownership only, evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds, must be disclosed to DADS;

(2) a certificate of good standing issued by the Comptroller of Public Accounts; and

(3) for initial applications and change of ownership only, the certificate of incorporation issued by the secretary of state for a corporation or a copy of the partnership agreement for a partnership; and

(4) for a facility that [which] advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement, using the departmental form, describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders, as required by the Texas Health and Safety Code, §242.202.

(A) Failure to submit the required disclosure statement will result in an administrative penalty in accordance with §19.2112 of this title (relating to Administrative Penalties).

(B) The disclosure statement must contain the following information:

(i) the facility's philosophy of care for residents with Alzheimer's disease and related disorders;

(ii) whether the facility is certified under Texas Health and Safety Code §242.040 for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders;

(iii) [~~(ii)~~] the preadmission, admission, and discharge process;

(iv) [~~(iii)~~] resident assessment, care planning, and implementation of the care plan;

(v) [~~(iv)~~] staffing patterns, such as resident to staff ratios, and staff training;

(vi) [~~(v)~~] the physical environment of the facility;

(vii) [~~(vi)~~] resident activities;

(viii) [~~(vii)~~] program charges;

(ix) [~~(viii)~~] systems for evaluation of the facility's program;

(x) [~~(ix)~~] family involvement in resident care; and

(xi) [~~(x)~~] the telephone number for DADS [~~DADS~~] toll-free complaint line.

(C) The disclosure statement must be updated and submitted to DADS [~~as needed~~] to reflect changes in special services for residents with Alzheimer's disease or [~~a~~] related disorders [~~condition~~]. A facility must update the disclosure statement and submit the updated disclosure statement to DADS 30 days prior to the facility making changes to any of the information required by paragraph (4)(B) of this subsection.

(c) Requested information. An applicant or license holder must provide any information DADS requests within 30 days after the request.

(d) Exemptions. The provisions of this section do not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER T. ADMINISTRATION

40 TAC §§19.1911, 19.1921, 19.1936

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code (THSC), §242.037, which authorizes rules for licensing of nursing facilities.

The amendments and new section implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and THSC, §242.019, and §242.202(d).

§19.1911. *Contents of the Clinical Record.*

(a) A resident's clinical record must meet all documentation requirements in the Texas Health and Human Services Commission rule at 1 TAC §371.214 (relating to Resource Utilization Group Classification System).

(b) The clinical record of each resident must contain:

(1) a face sheet that contains the attending physician's current mailing address and telephone numbers;

(2) sufficient information to identify and care for the resident, to include at a minimum:

(A) full name of resident;

(B) full home/ mailing address;

(C) social security number;

(D) health insurance claim numbers, if applicable;

(E) date of birth; and

(F) clinical record number, if applicable;

(3) a record of the resident's assessments, including 15 months of MDS records;

(4) the comprehensive, interdisciplinary plan of care and services provided (see also §19.802 of this chapter (relating to Comprehensive Care Plans));

(5) a permanency plan, for residents younger than 22 years of age;

(6) the results of any Preadmission Screening and Resident Review [~~conducted by DADS~~];

(7) signed and dated clinical documentation from all health care practitioners involved in the resident's care, with each page identifying the name of the resident for whom the clinical care is intended;

(8) any directives or medical powers of attorney as described in §19.419 of this chapter (relating to Advance Directives);

(9) discharge information in accordance with §19.803 of this chapter (relating to Discharge Summary (Discharge Plan of Care)) and a physician discharge summary, to include, at least, dates of admission and discharge, admitting and discharge diagnoses, condition on discharge, and prognosis, if applicable;

(10) at admission or within 14 days after admission, documentation of an initial medical evaluation, including history, physical examination, diagnoses and an estimate of discharge potential and rehabilitation potential, and documentation of a previous annual medical examination;

(11) authentication of a hospital diagnosis, which may be in the form of a signed hospital discharge summary, a signed report from the resident's hospital or attending physician, or a transfer form signed by the physician;

(12) the physician's signed and dated orders, including medication, treatment, diet, restorative and special medical procedures, and routine care to maintain or improve the resident's functional abilities (required for the safety and well-being of the resident), which must not be changed either on a handwritten or computerized physician's order sheet after the orders have been signed by the physician unless space allows for additional orders below the physician's signature, including space for the physician to sign and date again;

(13) arrangements for the emergency care of the resident in accordance with §19.1204 of this chapter (relating to Availability of Physician for Emergency Care);

(14) observations made by nursing personnel according to the time frames specified in §19.1010 of this chapter (relating to Nursing Practices); and

(15) items as specified on the MDS assessment; and

(16) current information, including:

(A) PRN medications and results;

(B) treatments and any notable results;

(C) physical complaints, changes in clinical signs and behavior, mental and behavioral status, and all incidents or accidents;

(D) flow sheets, which may include bathing, restraint observation or release documentation, elimination, fluid intake, vital signs, ambulation status, positioning, continence status and care, and weight;

(E) a record of dietary intake, including deviations from normal diet, rejection of substitutions, and physician's ordered snacks or supplemental feedings;

(F) a record of the date and hour a drug or treatment is administered; ~~and~~

(G) documentation of a special procedure performed for the safety and well-being of the resident; ~~and~~[-]

(17) a copy of the current court order and letters of guardianship appointing a guardian of a resident or a resident's estate that the facility received in response to the request made in accordance with §19.1936 of this subchapter (relating to Guardianship Orders for a Nursing Facility Resident).

§19.1921. *General Requirements for a Nursing Facility.*

(a) The facility must admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(b) Individuals who have met the requirements of Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR) and have mental or physical diseases, or both, that endanger other residents may be admitted or retained if adequate rooms and care are provided to protect the other residents.

(c) The term "hospital" may not be used as part of the name of a nursing facility unless it has been classified and duly licensed as a hospital by the appropriate state agency.

(d) A facility that ceases operation, temporarily or permanently, voluntarily or involuntarily, must provide notice to the residents and residents' relatives or responsible parties of closure. See §19.2310 of this chapter (relating to Nursing Facility Ceases to Participate) for additional notice requirements that apply to a Medicaid or Medicare certified facility.

(1) If the closure is voluntary, within one week after the date on which the decision to close is made, the facility must send written notice to residents' relatives or responsible parties stating that the closure will occur no earlier than 60 days after receipt of the notice.

(2) If the closure is involuntary, the facility must make the notification, whether orally or in writing, immediately on receiving notice of the closure.

(e) Each licensed facility must conspicuously and prominently post the information listed in paragraphs (1) - (13) of this subsection in an area of the facility that is readily available to residents, employees, and visitors. The posting must be in a manner that each item of information is directly visible at a single time. In the case of a licensed section that is part of a larger building or complex, the posting must be in the licensed section or public way leading to it. Any exceptions must be approved by DADS. The following items must be posted:

(1) the facility license;

(2) a complaint sign provided by DADS giving the toll-free telephone number;

(3) a notice in a form prescribed by DADS that inspection and related reports are available at the facility for public inspection;

(4) a concise summary prepared by DADS of the most recent inspection report;

(5) a notice of DADS toll-free telephone number 1-800-458-9858 to request summary reports relating to the quality of care, recent investigations, litigation or other aspects of the operation of the facility that are available to the public;

(6) a notice that DADS can provide information about the nursing facility administrator at 512-438-2015;

(7) if a facility has been ordered to suspend admissions, a notice of the suspension, which must be posted also on all doors providing public ingress to and egress from the facility;

(8) the statement of resident rights provided in §19.401 of this chapter (relating to Introduction) and any additional facility requirements involving resident rights and responsibilities;

(9) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by the Texas Health and Safety Code, §260A.014 and §260A.015; and that the facility has available for public inspection a copy of the Texas Health and Safety Code, Chapter 260A;

(10) a prominent and conspicuous sign for display in a public area of the facility that is readily available to the residents, employees, and visitors and that includes the statement: CASES OF SUS-

PECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO THE DEPARTMENT OF AGING AND DISABILITY SERVICES BY CALLING 1-800-458-9858;

(11) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders in accordance with §19.204(b)(4) of this chapter (relating to Application Requirements);

(12) at each entrance to the facility, a sign that states that a person may not enter the premises with a concealed handgun and that complies with Government Code §411.204; and

(13) daily for each shift, the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. In addition, the nursing facility must make the information required to be posted available to the public upon request.

(f) A facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders must give:

(1) the ~~[required department]~~ disclosure statement required by §19.204(b)(4) of this chapter (related to Application Requirements) to an individual:

(A) ~~[(1)]~~ with Alzheimer's disease and ~~[or a]~~ related disorders ~~[disorder]~~, seeking placement as a resident;

(B) ~~[(2)]~~ attempting to place another individual as a resident with Alzheimer's disease or a related disorder; and ~~[or]~~

(C) ~~[(3)]~~ seeking information about the facility's care or treatment of residents with Alzheimer's disease and ~~[or a]~~ related disorders; and ~~[disorder].~~

(2) at least 30 days before the update is effective, an updated disclosure statement required by §19.204(b)(4)(C) to a resident, responsible party, or legal guardian.

(g) The reports referenced in subsection (e)(3) of this section must be maintained in a well-lit, accessible location and must include:

(1) a statement of the facility's compliance record that is updated at least bi-monthly and reflects at least one year's compliance record, in a form required by DADS; and

(2) if a facility has been cited for a violation of residents' rights, a copy of the citation, which must remain in the reports until any regulatory action with respect to the violation is complete and DADS has determined that the facility is in full compliance with the applicable requirement.

(h) The facility must inform the resident or responsible party or both upon the resident's admission that the inspection reports referenced in subsection (e)(3) of this section are available for review.

(i) A facility must provide the telephone number for reporting cases of suspected abuse, neglect, or exploitation to an immediate family member of a resident of the facility upon the resident's admission to the facility.

(j) A copy of the Texas Health and Safety Code, Chapters 242 and 260A, must be available for public inspection at the facility.

(k) Within 72 hours after admission, the facility must prepare a written inventory of the personal property a resident brings to the facility, such as furnishings, jewelry, televisions, radios, sewing machines, and medical equipment. The facility does not have to inventory the res-

ident's clothing; however, the operating policies and procedures must provide for the management of resident clothing and other personal property to prevent loss or damage. The facility administrator or his or her designee must sign and retain the written inventory and must give a copy to the resident or the resident's responsible party or both. The facility must revise the written inventory to show if property is lost, destroyed, damaged, replaced, or supplemented. Upon discharge of the resident, the facility must document the disposition of personal effects by a dated receipt bearing the signature of the resident or the resident's responsible party or both. See §19.416 of this chapter (relating to Personal Property).

(l) Each facility must comply with the provisions of the Texas Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities).

(m) Before a facility hires an unlicensed employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the DADS nurse aide registry (NAR) to determine whether the individual is designated in either registry as unemployable. Both registries can be accessed on the DADS Internet website.

(n) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable.

(o) A facility must provide notification about the EMR to an employee in accordance with §93.3 of this title (relating to Employment and Registry Information).

(p) In addition to the initial search of the EMR and NAR, a facility must:

(1) conduct a search of the NAR and EMR to determine if an employee of the facility is listed as unemployable in either registry as follows:

(A) for an employee most recently hired before September 1, 2009, by August 31, 2011, and at least every 12 ~~[twelve]~~ months thereafter; and

(B) for an employee most recently hired on or after September 1, 2009, at least every twelve months; and

(2) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

(q) A facility must upload to the DADS website, at <http://fives.dads.state.tx.us/choose.asp>, a statement of all facility requirements involving resident rights and responsibilities that are not described in §19.401(b) of this chapter. The facility must promptly upload a revised statement if the facility changes its requirements.

§19.1936. Guardianship Orders for a Nursing Facility Resident.

(a) A facility must request a copy of any current court order appointing a guardian and letters of guardianship for a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support.

(b) A facility must request the court order and letters of guardianship:

(1) when a facility admits an individual; and

(2) when the facility becomes aware a guardian is appointed after the facility admits a resident.

(c) A facility must request an updated copy of the court order and letters of guardianship at each annual assessment and retain documentation of any change.

(d) A facility must make at least one follow-up request within 30 days after the facility makes a request in accordance with subsections (b) and (c) of this section if the facility has not received:

(1) a copy of the court order and letters of guardianship; or

(2) a response that there is no court order and letters of guardianship.

(e) A facility must keep in the resident's clinical record:

(1) documentation of the results of the request for the court order and letters of guardianship; and

(2) a copy of the most recent court order appointing a guardian of a resident or a resident's estate and letters of guardianship that the facility received in response to the request made in accordance with subsections (b), (c), and (d) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600015

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 14, 2016

For further information, please call: (210) 619-8292



## CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§92.2, 92.41, 92.51, and 92.53 and new §92.42, in Chapter 92, Licensing Standards for Assisted Living Facilities.

### BACKGROUND AND PURPOSE

The purpose of the amendments and new section is to implement §247.070, Texas Health and Safety Code (THSC), as added by House Bill (H.B.) 1337 of the 84th Legislature, Regular Session, 2015, regarding Guardianship Orders, and changes to §247.026 and §247.029, THSC, as added by H.B. 2588 of the 84th Legislature, Regular Session, 2015, regarding Alzheimer's Disclosure.

The proposal specifies the process an assisted living facility (ALF) must follow to request a copy of any court order appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support and requires an ALF to maintain a copy of any court order appointing a guardian of a resident or resident's estate in the resident's records.

The proposal defines the term "Alzheimer's disease and related disorders" and requires an ALF to include in the facility's Alzheimer's disclosure statement whether the facility is certified under Texas Health and Safety Code (THSC), §247.029, to provide personal care services to residents with Alzheimer's disease and related disorders. An ALF must update the disclosure statement to reflect changes in special services provided to residents with Alzheimer's disease and related disorders.

The proposal also amends §92.41 to reflect an updated cite for a Texas Department of State Health Services (DSHS) food-safety rule contained in §92.41(m). The amendment will aid DADS in enforcing the provisions of §92.41.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §92.2 adds a definition for "Alzheimer's Assisted Living Disclosure Statement form" and "Alzheimer's disease and related disorders."

The proposed amendment to §92.41 requires an ALF to keep a copy of the most recent court order appointing a guardian of a resident and letters of guardianship in the resident's records.

The proposed amendment to §92.41 also updates a repealed cite for a DSHS rule contained in §92.41.

The proposed new §92.42 adds requirements regarding an ALF's responsibility to acquire guardianship records and letters of guardianship for a resident who has a court-appointed guardian and a resident for whom a guardian is appointed after the resident enters an assisted living facility. The proposed new section also explains which guardianship documents a facility must request, when the facility must request the documents, how often the facility must request the documents, and where the facility must keep the documents.

The proposed amendment to §92.51 updates the reference to §92.4(c) and deletes disclosure information found in §92.51(c)(1) - (2). This information is addressed in the proposed new §92.53(d). Also, the proposal deletes obsolete information in §92.51(f).

The proposed amendment to §92.53 adds subsection (d), which requires an ALF to use the Alzheimer's Assisted Living Disclosure Statement form to clarify whether an ALF is licensed under THSC §247.029 for the provision of personal care services to residents with Alzheimer's disease and related disorders. The subsection also requires an ALF to update this form as needed to reflect changes in special services provided to residents with Alzheimer's disease and related disorders.

### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed rules are in effect, enforcing or administering the amendments and new section does not have foreseeable implications relating to costs or revenues of state or local governments.

### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed rules will not have an adverse economic effect on small businesses or micro-businesses because there is no cost to nursing facilities or assisted living facilities to comply with the proposed rules.

### PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the proposed amendments and new section are in effect, the public benefit expected as a result of enforcing the proposed amendments and new section is there will be clear communication to guardians about a resident's care and allegations of abuse, neglect, or exploitation. The public also will benefit from the adoption of a standard definition of Alzheimer's disease and related disorders and the requirement for a facility to disclose whether it is certified by DADS to provide personal care and ser-

vices to residents with Alzheimer's disease and related disorders.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new section. The proposed amendment and new section will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sharon Wallace at (210) 619-8292 in DADS Long Term Care Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R11, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R11" in the subject line.

### SUBCHAPTER A. INTRODUCTION

#### 40 TAC §92.2

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS and Texas Health and Safety Code (THSC), §247.025, which authorizes the licensing of assisted living facilities.

The amendment implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and THSC, §247.029.

##### §92.2. Definitions.

The following words and terms, when used in this chapter, have the following meaning, unless the context clearly indicates otherwise.

(1) Abuse--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.401(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(1), which is:

(i) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(ii) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure), or Chapter 22, Penal Code (assaultive offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(2) Accreditation commission--Has the meaning given in Texas Health and Safety Code, §247.032.

(3) Advance directive--Has the meaning given in Texas Health and Safety Code, §166.002.

(4) Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, and each person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(5) Alzheimer's Assisted Living Disclosure Statement form--The DADS-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(6) Alzheimer's disease and related disorders--Cognitive disorders as described by the Centers for Disease Control and Prevention (CDC) or as found in the most current volume of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(7) [~~5~~] Alzheimer's facility--A type B assisted living facility that is certified to provide specialized services to residents with Alzheimer's or a related condition.

(8) [~~6~~] Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(9) [~~7~~] Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.

(10) [~~8~~] Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(11) [~~9~~] Behavioral emergency--Has the meaning given in §92.41(p)(2) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities).

(12) [(40)] Change of ownership--A change of ownership is:

(A) a change of sole proprietorship that is licensed to operate a facility;

(B) a change of 50 percent or more in the ownership of the business organization that is licensed to operate the facility;

(C) a change in the federal taxpayer identification number; or

(D) relinquishment by the license holder of the operation of the facility.

(13) [(41)] Commingles--The laundering of apparel or linens of two or more individuals together.

(14) [(42)] Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(B) any person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(15) [(43)] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(16) [(44)] DADS--The Department of Aging and Disability Services.

(17) [(45)] DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS.

(18) [(46)] Dietitian--A person who currently holds a license or provisional license issued by the Texas State Board of Examiners of Dietitians.

(19) [(47)] Disclosure statement--A DADS form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(20) [(48)] Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(21) [(49)] Exploitation--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.401(2), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(22) [(20)] Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(23) [(21)] Fire suppression authority--The paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(24) [(22)] Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(25) [(23)] Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(26) [(24)] Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(27) [(25)] Immediate threat--There is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's non-compliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(28) [(26)] Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(29) [(27)] Large facility--A facility licensed for 17 or more residents.

(30) [(28)] Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter

described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(31) [(29)] Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including DADS or any other state, federal or local authority.

(32) [(30)] Local code--A model building code adopted by the local building authority where the assisted living facility is constructed or located.

(33) [(31)] Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(34) [(32)] Manager--The individual in charge of the day-to-day operation of the facility.

(35) [(33)] Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(36) [(34)] Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(37) [(35)] Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §92.41(j) of this chapter.

(38) [(36)] Medication (self-administration)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(39) [(37)] Neglect--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code, §261.401(3), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes

or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(40) [(38)] NFPA 101--The 2000 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(41) [(39)] Ombudsman--Has the meaning given in §85.2 of this title (relating to Definitions).

(42) [(40)] Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(43) [(41)] Person with a disclosable interest--Any person who owns 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 247. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

(44) [(42)] Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(45) [(43)] Physician--A practitioner licensed by the Texas Medical Board.

(46) [(44)] Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(47) [(45)] Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(48) [(46)] Resident--An individual accepted for care in a facility.

(49) [(47)] Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(50) [(48)] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(51) [(49)] Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(52) [(50)] Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(53) [(51)] Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(54) [(52)] Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(55) [(53)] Short-term acute episode--An illness of less than 30 days duration.

(56) [(54)] Small facility--A facility licensed for 16 or fewer residents.

(57) [(55)] Staff--Employees of an assisted living facility.

(58) [(56)] Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(59) [(57)] Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(60) [(58)] Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(61) [(59)] Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC [Centers for Disease Control and Prevention].

(62) [(60)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §§92.41, 91.42, 91.51, 92.53

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code (THSC), §247.025, which authorizes the licensing of assisted living facilities.

The amendments and new section implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and THSC, §247.026 and §247.070.

§92.41. *Standards for Type A and Type B Assisted Living Facilities.*

(a) Employees.

(1) Manager. Each facility must designate, in writing, a manager to have authority over the operation.

(A) Qualifications. In small facilities, the manager must have proof of graduation from an accredited high school or certification of equivalency of graduation. In large facilities, a manager must have:

(i) an associate's degree in nursing, health care management, or a related field;

(ii) a bachelor's degree; or

(iii) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working in management or in health care industry management.

(B) Training in management of assisted living facilities. After August 1, 2000, a manager must have completed at least one educational course on the management of assisted living facilities, which must include information on the assisted living standards; resident characteristics (including dementia), resident assessment and skills working with residents; basic principles of management; food and nutrition services; federal laws, with an emphasis on the Americans with Disability Act's accessibility requirements; community resources; ethics, and financial management.

(i) The course must be at least 24 hours in length.

(I) Eight hours of training on the assisted living standards must be completed within the first three months of employment.

(II) The 24-hour training requirement may not be met through in-services at the facility, but may be met through structured, formalized classes, correspondence courses, training videos, distance learning programs, or off-site training courses. All training must be provided or produced by academic institutions, assisted living corporations, or recognized state or national organizations or associations. Subject matter that deals with the internal affairs of an organization will not qualify for credit.

(III) Evidence of training must be on file at the facility and must contain documentation of content, hours, dates, and provider.

(ii) Managers hired after August 1, 2000, who can show documentation of a previously completed comparable course of study are exempt from the training requirements.

(iii) Managers hired after August 1, 2000, must complete the course by the first anniversary of employment as manager.

(iv) An assisted living manager who was employed by a licensed assisted living facility on August 1, 2000, is exempt from the training requirement. An assisted living manager who was employed by a licensed assisted living facility as the manager before August 1, 2000, and changes employment to another licensed assisted living facility as the manager, with a break in employment of no longer than 30 days, is also exempt from the training requirement.

(C) Continuing education. All managers must show evidence of 12 hours of annual continuing education. This requirement will be met during the first year of employment by the 24-hour assisted living management course. The annual continuing education requirement must include at least two of the following areas:

- (i) resident and provider rights and responsibilities, abuse/neglect, and confidentiality;
- (ii) basic principles of management;
- (iii) skills for working with residents, families, and other professional service providers;
- (iv) resident characteristics and needs;
- (v) community resources;
- (vi) accounting and budgeting;
- (vii) basic emergency first aid; or
- (viii) federal laws, such as Americans with Disabilities Act, Civil Rights Act of 1991, the Rehabilitation Act of 1993, Family and Medical Leave Act of 1993, and the Fair Housing Act.

(D) Manager's responsibilities. The manager must be on duty 40 hours per week and may manage only one facility, except for managers of small Type A facilities, who may have responsibility for no more than 16 residents in no more than four facilities. The managers of small Type A facilities must be available by telephone or pager when conducting facility business off-site.

(E) Manager's absence. An employee competent and authorized to act in the absence of the manager must be designated in writing.

(2) Attendants. Full-time facility attendants must be at least 18 years old or a high-school graduate.

(A) An attendant must be in the facility at all times when residents are in the facility.

(B) Attendants are not precluded from performing other functions as required by the assisted living facility.

(3) Staffing.

(A) A facility must develop and implement staffing policies, which require staffing ratios based upon the needs of the residents, as identified in their service plans.

(B) Prior to admission, a facility must disclose, to prospective residents and their families, the facility's normal 24-hour staffing pattern and post it monthly in accordance with §92.127 of this title (relating to Required Postings).

(C) A facility must have sufficient staff to:

- (i) maintain order, safety, and cleanliness;
- (ii) assist with medication regimens;

(iii) prepare and service meals that meet the daily nutritional and special dietary needs of each resident, in accordance with each resident's service plan;

(iv) assist with laundry;

(v) assure that each resident receives the kind and amount of supervision and care required to meet his basic needs; and

(vi) ensure safe evacuation of the facility in the event of an emergency.

(D) A facility must meet the staffing requirements described in this subparagraph.

(i) Type A facility: Night shift staff in a small facility must be immediately available. In a large facility, the staff must be immediately available and awake.

(ii) Type B facility: Night shift staff must be immediately available and awake, regardless of the number of licensed beds.

(4) Staff training. The facility must document that staff members are competent to provide personal care before assuming responsibilities and have received the following training.

(A) All staff members must complete four hours of orientation before assuming any job responsibilities. Training must cover, at a minimum, the following topics:

- (i) reporting of abuse and neglect;
- (ii) confidentiality of resident information;
- (iii) universal precautions;
- (iv) conditions about which they should notify the facility manager;
- (v) residents' rights; and
- (vi) emergency and evacuation procedures.

(B) Attendants must complete 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must include:

- (i) in Type A and B facilities, providing assistance with the activities of daily living;
- (ii) resident's health conditions and how they may affect provision of tasks;
- (iii) safety measures to prevent accidents and injuries;
- (iv) emergency first aid procedures, such as the Heimlich maneuver and actions to take when a resident falls, suffers a laceration, or experiences a sudden change in physical and/or mental status;
- (v) managing disruptive behavior;
- (vi) behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints; and
- (vii) fall prevention.

(C) Direct care staff must complete six documented hours of education annually, based on each employee's hire date. Staff must complete one hour of annual training in fall prevention and one hour of training in behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to

restraints. Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Suggested topics include:

- (i) promoting resident dignity, independence, individuality, privacy, and choice;
  - (ii) resident rights and principles of self-determination;
  - (iii) communication techniques for working with residents with hearing, visual, or cognitive impairment;
  - (iv) communicating with families and other persons interested in the resident;
  - (v) common physical, psychological, social, and emotional conditions and how these conditions affect residents' care;
  - (vi) essential facts about common physical and mental disorders, for example, arthritis, cancer, dementia, depression, heart and lung diseases, sensory problems, or stroke;
  - (vii) cardiopulmonary resuscitation;
  - (viii) common medications and side effects, including psychotropic medications, when appropriate;
  - (ix) understanding mental illness;
  - (x) conflict resolution and de-escalation techniques;
- and
- (xi) information regarding community resources.

(D) Facilities that employ licensed nurses, certified nurse aides, or certified medication aides must provide annual in-service training, appropriate to their job responsibilities, from one or more of the following areas:

- (i) communication techniques and skills useful when providing geriatric care (skills for communicating with the hearing impaired, visually impaired and cognitively impaired; therapeutic touch; recognizing communication that indicates psychological abuse);
- (ii) assessment and interventions related to the common physical and psychological changes of aging for each body system;
- (iii) geriatric pharmacology, including treatment for pain management, food and drug interactions, and sleep disorders;
- (iv) common emergencies of geriatric residents and how to prevent them, for example falls, choking on food or medicines, injuries from restraint use; recognizing sudden changes in physical condition, such as stroke, heart attack, acute abdomen, acute glaucoma; and obtaining emergency treatment;
- (v) common mental disorders with related nursing implications; and
- (vi) ethical and legal issues regarding advance directives, abuse and neglect, guardianship, and confidentiality.

(b) Social services. The facility must provide an activity and/or social program at least weekly for the residents.

(c) Resident assessment. Within 14 days of admission, a resident comprehensive assessment and an individual service plan for providing care, which is based on the comprehensive assessment, must be completed. The comprehensive assessment must be completed by the appropriate staff and documented on a form developed by the facility.

When a facility is unable to obtain information required for the comprehensive assessment, the facility should document its attempts to obtain the information.

(1) The comprehensive assessment must include the following items:

- (A) the location from which the resident was admitted;
- (B) primary language;
- (C) sleep-cycle issues;
- (D) behavioral symptoms;
- (E) psychosocial issues (i.e., a psychosocial functioning assessment that includes an assessment of mental or psychosocial adjustment difficulty; a screening for signs of depression, such as withdrawal, anger or sad mood; assessment of the resident's level of anxiety; and determining if the resident has a history of psychiatric diagnosis that required in-patient treatment);
- (F) Alzheimer's/dementia history;
- (G) activities of daily living patterns (i.e., wakened to toilet all or most nights, bathed in morning/night, shower or bath);
- (H) involvement patterns and preferred activity pursuits (i.e., daily contact with relatives, friends, usually attended religious services, involved in group activities, preferred activity settings, general activity preferences);
- (I) cognitive skills for daily decision-making (independent, modified independence, moderately impaired, severely impaired);
- (J) communication (ability to communicate with others, communication devices);
- (K) physical functioning (transfer status; ambulation status; toilet use; personal hygiene; ability to dress, feed and groom self);
- (L) continence status;
- (M) nutritional status (weight changes, nutritional problems or approaches);
- (N) oral/dental status;
- (O) diagnoses;
- (P) medications (administered, supervised, self-administers);
- (Q) health conditions and possible medication side effects;
- (R) special treatments and procedures;
- (S) hospital admissions within the past six months or since last assessment; and
- (T) preventive health needs (i.e., blood pressure monitoring, hearing-vision assessment).

(2) The service plan must be approved and signed by the resident or a person responsible for the resident's health care decisions. The facility must provide care according to the service plan. The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.

(3) For respite clients, the facility may keep a service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(4) Emergency admissions must be assessed and a service plan developed for them.

(d) Resident policies.

(1) Before admitting a resident, facility staff must explain and provide a copy of the disclosure statement to the resident, family, or responsible party. An assisted living facility that provides brain injury rehabilitation services must attach to its disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitative services. The facility must document receipt of the disclosure statement.

(2) The facility must provide residents with a copy of the Resident Bill of Rights.

(3) When a resident is admitted, the facility must provide to the resident's immediate family, and document the family's receipt of, the DADS telephone hotline number to report suspected abuse, neglect, or exploitation, as referenced in §92.102 of this chapter (relating to Abuse, Neglect, or Exploitation Reportable to DADS).

(4) The facility must have written policies regarding residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(5) Each facility must make available copies of the resident policies to staff and to residents or residents' responsible parties at time of admission. Documented notification of any changes to the policies must occur before the effective date of the changes.

(6) Before or upon admission of a resident, a facility must notify the resident and, if applicable, the resident's legally authorized representative, of DADS rules and the facility's policies related to restraint and seclusion.

(e) Admission policies.

(1) A facility must not admit or retain a resident whose needs cannot be met by the facility or who cannot secure the necessary services from an outside resource. As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided at the facility. If the individual is appropriate for placement in a facility, then the decision that additional services are necessary and can be secured is the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative. Regardless of the possibility of "aging in place" or securing additional services, the facility must meet all Life Safety Code requirements based on each resident's evacuation capabilities, except as provided in subsection (f) of this section.

(2) There must be a written admission agreement between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services. If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.

(3) A facility must share a copy of the facility disclosure statement, rate schedule, and individual resident service plan with outside resources that provide any additional services to a resident. Outside resources must provide facilities with a copy of their resident care plans and must document, at the facility, any services provided, on the day provided.

(4) Each resident must have a health examination by a physician performed within 30 days before admission or 14 days after

admission, unless a transferring hospital or facility has a physical examination in the medical record.

(5) The assisted living facility must secure at the time of admission of a resident the following identifying information:

- (A) full name of resident;
- (B) social security number;
- (C) usual residence (where resident lived before admission);
- (D) sex;
- (E) marital status;
- (F) date of birth;
- (G) place of birth;
- (H) usual occupation (during most of working life);
- (I) family, other persons named by the resident, and physician for emergency notification;
- (J) pharmacy preference; and
- (K) Medicaid/Medicare number, if available.

(f) Inappropriate placement in Type A or Type B facilities.

(1) DADS or a facility may determine that a resident is inappropriately placed in the facility if a resident experiences a change of condition but continues to meet the facility evacuation criteria.

(A) If DADS determines the resident is inappropriately placed and the facility is willing to retain the resident, the facility is not required to discharge the resident if, within 10 working days after receiving the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A, from DADS, the facility submits the following to the DADS regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

- (I) the resident wants to remain at the facility; or
- (II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility; and

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility.

(B) If the facility initiates the request for an inappropriately placed resident to remain in the facility, the facility must complete and date the forms described in subparagraph (A) of this paragraph and submit them to the DADS regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the DADS prescribed forms.

(2) DADS or a facility may determine that a resident is inappropriately placed in the facility if the facility does not meet all requirements referenced in §92.3 of this chapter (relating to Types of Assisted Living Facilities) for the evacuation of a designated resident.

(A) If, during a site visit, DADS determines that a resident is inappropriately placed at the facility and the facility is willing to retain the resident, the facility must request an evacuation waiver as described in subparagraph (C) of this paragraph to the DADS regional

office within 10 working days after the date the facility receives the Statement of Licensing Violations and Plan of Correction, Form 372, and the Report of Contact, Form 3614-A. If the facility is not willing to retain the resident, the facility must discharge the resident within 30 days after receiving the Statement of Licensing Violations and Plan of Correction and the Report of Contact.

(B) If the facility initiates the request for a resident to remain in the facility, the facility must request an evacuation waiver as described in subparagraph (C) of this paragraph from the DADS regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the DADS prescribed forms.

(C) To request an evacuation waiver for an inappropriately placed resident, a facility must submit to the DADS regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility;

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility;

(iv) a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, including:

(I) the specific staff positions that will be on duty to assist with evacuation and their shift times;

(II) specific staff positions that will be on duty and awake at night; and

(III) specific staff training that relates to resident evacuation;

(v) a copy of an accurate facility floor plan, to scale, that labels all rooms by use and indicates the specific resident's room;

(vi) a copy of the facility's emergency evacuation plan;

(vii) a copy of the facility fire drill records for the last 12 months;

(viii) a copy of a completed Fire Marshal/State Fire Marshal Notification, Form 1127, signed by the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) as an acknowledgement that the fire authority has been notified that the resident's evacuation capability has changed;

(ix) a copy of a completed Fire Suppression Authority Notification, Form 1129, signed by the local fire suppression authority as an acknowledgement that the fire suppression authority has been notified that the resident's evacuation capability has changed;

(x) a copy of the resident's most recent comprehensive assessment that addresses the areas required by subsection (c) of this section and that was completed within 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(xi) the resident's service plan that addresses all aspects of the resident's care, particularly those areas identified by DADS, including:

(I) the resident's medical condition and related nursing needs;

(II) hospitalizations within 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(III) any significant change in condition in the last 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(IV) specific staffing needs; and

(V) services that are provided by an outside provider;

(xii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident; and

(xiii) service plans of other residents, if requested by DADS.

(D) A facility must meet the following criteria to receive a waiver from DADS:

(i) The emergency plan submitted in accordance with subparagraph (C)(iv) of this paragraph must ensure that:

(I) staff is adequately trained;

(II) a sufficient number of staff is on all shifts to move all residents to a place of safety;

(III) residents will be moved to appropriate locations, given health and safety issues;

(IV) all possible locations of fire origin areas and the necessity for full evacuation of the building are addressed;

(V) the fire alarm signal is adequate;

(VI) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;

(VII) there is a method to effectively communicate the actual location of the fire; and

(VIII) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire; and

(ii) the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation or who have special needs that require staff assistance.

(E) DADS reviews the documentation submitted under this subsection and notifies the facility in writing of its determination to grant or deny the waiver within 10 working days after the date the request is received in the DADS regional office.

(F) Upon notification that DADS has granted the evacuation waiver, the facility must immediately initiate all provisions of the proposed emergency plan. If the facility does not follow the emergency plan, and there are health and safety concerns that are not addressed, DADS may determine that there is an immediate threat to the health or safety of a resident.

(G) DADS reviews a waiver of evacuation during the facility's annual renewal licensing inspection.

(3) If a DADS surveyor determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements or waiver required in this subsection, the facility must discharge the resident.

(A) The resident is allowed 30 days after the date of notice of discharge to move from the facility.

(B) A discharge required under this subsection must be made notwithstanding:

(i) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(ii) the terms of any contract.

(4) If a facility is required to discharge the resident because the facility has not submitted the written statements required by paragraph (1) of this subsection to the DADS regional office, or DADS denies the waiver as described in paragraph (2) of this subsection, DADS may:

(A) assess an administrative penalty if DADS determines the facility has intentionally or repeatedly disregarded the waiver process because the resident is still residing in the facility when DADS conducts a future onsite visit; or

(B) seek other sanctions, including an emergency suspension or closing order, against the facility under Texas Health and Safety Code Chapter 247, Subchapter C (relating to General Enforcement), if DADS determines there is a significant risk and immediate threat to the health and safety of a resident of the facility.

(5) The facility's disclosure statement must notify the resident and resident's legally authorized representative of the waiver process described in this section and the facility's policies and procedures for aging in place.

(6) After the first year of employment and no later than the anniversary date of the facility manager's hire date, the manager must show evidence of annual completion of DADS training on aging in place and retaliation.

(g) Advance directives.

(1) The facility must maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the facility is unwilling or unable to provide or withhold in accordance with an advance directive.

(2) The facility must provide written notice of these policies to residents at the time they are admitted to receive services from the facility.

(A) If, at the time notice is to be provided, the resident is incompetent or otherwise incapacitated and unable to receive the notice, the facility must provide the written notice, in the following order of preference, to:

- (i) the resident's legal guardian;
- (ii) a person responsible for the resident's health care decisions;
- (iii) the resident's spouse;
- (iv) the resident's adult child;
- (v) the resident's parents; or
- (vi) the person admitting the resident.

(B) If the facility is unable, after diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice.

(3) If a resident who was incompetent or otherwise incapacitated and unable to receive notice regarding the facility's advance directives policies later becomes able to receive the notice, the facility must provide the written notice at the time the resident becomes able to receive the notice.

(4) Failure to inform the resident of facility policies regarding the implementation of advance directives will result in an administrative penalty of \$500.

(A) Facilities will receive written notice of the recommendation for an administrative penalty.

(B) Within 20 days after the date on which written notice is sent to a facility, the facility must give written consent to the penalty or make written request for a hearing to the Texas Health and Human Services Commission.

(C) Hearings will be held in accordance with the formal hearing procedures at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act).

(h) Resident records.

(1) Records that pertain to residents must be treated as confidential and properly safeguarded from unauthorized use, loss, or destruction.

(2) Resident records must contain:

(A) information contained in the facility's standard and customary admission form;

(B) a record of the resident's assessments;

(C) the resident's service plan

(D) physician's orders, if any;

(E) any advance directives;

(F) documentation of a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record. Christian Scientists are excluded from this requirement; and

(G) documentation by health care professionals of any services delivered in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law; and[-]

(H) a copy of the most recent court order appointing a guardian of a resident or a resident's estate and letters of guardianship that the facility received in response to the request made in accordance with §92.42 of this subchapter (relating to Guardianship Record Requirements).

(3) Records must be available to residents, their legal representatives, and DADS staff.

(i) Personnel records. An assisted living facility must keep current and complete personnel records on a facility employee for review by DADS staff including:

(1) documentation that the facility performed a criminal history check;

(2) an annual employee misconduct registry check;

(3) an annual nurse aide registry check;

(4) documentation of initial tuberculosis screenings referenced in subsection (n) of this section;

(5) documentation of the employee's compliance with or exemption from the facility vaccination policy referenced in subsection (r) of this section; and

(6) the signed statement from the employee referenced in §92.102 of this chapter acknowledging that the employee may be criminally liable for the failure to report abuse, neglect and exploitation.

(j) Medications.

(1) Administration. Medications must be administered according to physician's orders.

(A) Residents who choose not to or cannot self-administer their medications must have their medications administered by a person who:

(i) holds a current license under state law that authorizes the licensee to administer medication; or

(ii) holds a current medication aide permit and acts under the authority of a person who holds a current nursing license under state law that authorizes the licensee to administer medication. A medication aide must function under the direct supervision of a licensed nurse on duty or on call by the facility.

(iii) is an employee of the facility to whom the administration of medication has been delegated by a registered nurse, who has trained them to administer medications or verified their training. The delegation of the administration of medication is governed by 22 TAC Chapter 225 (concerning RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions), which implements the Nursing Practice Act.

(B) All resident's prescribed medication must be dispensed through a pharmacy or by the resident's treating physician or dentist.

(C) Physician sample medications may be given to a resident by the facility provided the medication has specific dosage instructions for the individual resident.

(D) Each resident's medications must be listed on an individual resident's medication profile record. The recorded information obtained from the prescription label must include, but is not limited to, the medication:

(i) name;

(ii) strength;

(iii) dosage;

(iv) amount received;

(v) directions for use;

(vi) route of administration;

(vii) prescription number;

(viii) pharmacy name; and

(ix) the date each medication was issued by the pharmacy.

(2) Supervision. Supervision of a resident's medication regimen by facility staff may be provided to residents who are incapable of self-administering without assistance to include and limited to:

(A) reminders to take their medications at the prescribed time;

(B) opening containers or packages and replacing lids;

(C) pouring prescribed dosage according to medication profile record;

(D) returning medications to the proper locked areas;

(E) obtaining medications from a pharmacy; and

(F) listing on an individual resident's medication profile record the medication:

(i) name;

(ii) strength;

(iii) dosage;

(iv) amount received;

(v) directions for use;

(vi) route of administration;

(vii) prescription number;

(viii) pharmacy name; and

(ix) the date each medication was issued by the pharmacy.

(3) Self-administration.

(A) Residents who self-administer their own medications and keep them locked in their room must be counseled at least once a month by facility staff to ascertain if the residents continue to be capable of self-administering their medications/treatments and if security of medications can continue to be maintained. The facility must keep a written record of counseling.

(B) Residents who choose to keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication/treatment regimen. A facility staff member must remain in or at the storage area the entire time any resident is present.

(4) General.

(A) Facility staff will immediately report to the resident's physician and responsible party any unusual reactions to medications or treatments.

(B) When the facility supervises or administers the medications, a written record must be kept when the resident does not receive or take his/her medications/treatments as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed; however, the recording of missed doses of medication does not apply when the resident is away from the assisted living facility.

(5) Storage.

(A) The facility must provide a locked area for all medications. Examples of areas include, but are not limited to:

(i) central storage area;

(ii) medication cart; and

(iii) resident room.

(B) Each resident's medication must be stored separately from other resident's medications within the storage area.

(C) A refrigerator must have a designated and locked storage area for medications that require refrigeration, unless it is inside a locked medication room.

(D) Poisonous substances and medications labeled for "external use only" must be stored separately within the locked medication area.

(E) If facilities store controlled drugs, facility policies and procedures must address the prevention of the diversion of the controlled drugs.

(6) Disposal.

(A) Medications no longer being used by the resident for the following reasons are to be kept separate from current medications and are to be disposed of by a registered pharmacist licensed in the State of Texas:

(i) medications discontinued by order of the physician;

(ii) medications that remain after a resident is deceased; or

(iii) medications that have passed the expiration date.

(B) Needles and hypodermic syringes with needles attached must be disposed as required by 25 TAC §§1.131 - 1.137 (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(C) Medications kept in a central storage area are released to discharged residents when a receipt has been signed by the resident or responsible party.

(k) Accident, injury, or acute illness.

(1) In the event of accident or injury that requires emergency medical, dental or nursing care, or in the event of apparent death, the assisted living facility will:

(A) make arrangements for emergency care and/or transfer to an appropriate place for treatment, such as a physician's office, clinic, or hospital;

(B) immediately notify the resident's physician and next of kin, responsible party, or agency who placed the resident in the facility; and

(C) describe and document the injury, accident, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file.

(2) The facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(3) Residents who need the services of professional nursing or medical personnel due to a temporary illness or injury may have those services delivered by persons qualified to deliver the necessary service.

(l) Resident finances. The assisted living facility must keep a simple financial record on all charges billed to the resident for care and these records must be available to DADS. If the resident entrusts the handling of any personal finances to the assisted living facility, a simple financial record must be maintained to document accountability for receipts and expenditures, and these records must be available to DADS. Receipts for payments from residents or family members must be issued upon request.

(m) Food and nutrition services.

(1) A person designated by the facility is responsible for the total food service of the facility.

(2) At least three meals or their equivalent must be served daily, at regular times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning. All exceptions must be specifically approved by DADS.

(3) Menus must be planned one week in advance and must be followed. Variations from the posted menus must be documented. Menus must be prepared to provide a balanced and nutritious diet, such as that recommended by the National Food and Nutrition Board. Food must be palatable and varied. Records of menus as served must be filed and maintained for 30 days after the date of serving.

(4) Therapeutic diets as ordered by the resident's physician must be provided according to the service plan. Therapeutic diets that cannot customarily be prepared by a layperson must be calculated by a qualified dietician. Therapeutic diets that can customarily be prepared by a person in a family setting may be served by the assisted living facility.

(5) Supplies of staple foods for a minimum of a four-day period and perishable foods for a minimum of a one-day period must be maintained on the premises.

(6) Food must be obtained from sources that comply with all laws relating to food and food labeling. If food, subject to spoilage, is removed from its original container, it must be kept sealed, and labeled. Food subject to spoilage must also be dated.

(7) Plastic containers with tight fitting lids are acceptable for storage of staple foods in the pantry.

(8) Potentially hazardous food, such as meat and milk products, must be stored at 45 degrees Fahrenheit or below. Hot food must be kept at 140 degrees Fahrenheit or above during preparation and serving. Food that is reheated must be heated to a minimum of 165 degrees Fahrenheit.

(9) Freezers must be kept at a temperature of 0 degrees Fahrenheit or below and refrigerators must be 41 degrees Fahrenheit or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(10) Food must be prepared and served with the least possible manual contact, with suitable utensils, and on surfaces that have been cleaned, rinsed, and sanitized before use to prevent cross-contamination.

(11) Facilities must prepare food in accordance with established food preparation practices and safety techniques.

(12) A food service employee, while infected with a communicable disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, must not work in the food service area in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(13) Effective hair restraints must be worn to prevent the contamination of food.

(14) Tobacco products must not be used in the food preparation and service areas.

(15) Kitchen employees must wash their hands before returning to work after using the lavatory.

(16) Dishwashing chemicals used in the kitchen may be stored in plastic containers if they are the original containers in which the manufacturer packaged the chemicals.

(17) Sanitary dishwashing procedures and techniques must be followed.

(18) Facilities that house 17 or more residents must comply with 25 TAC Chapter 228, Subchapters A - J [§§229.161 - 229.171 and §§229.173 - 229.175] (relating to Texas Food Establishment rules) and local health ordinances or requirements must be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

(n) Infection control.

(1) Each facility must establish and maintain an infection control policy and procedure designated to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(2) The facility must comply with departmental rules regarding special waste in 25 TAC §§1.131 - 1.137.

(3) The name of any resident of a facility with a reportable disease as specified in 25 TAC §§97.1 - 97.13 (relating to Control of Communicable Diseases) must be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures must be implemented as directed by the local health authority.

(4) The facility must have written policies for the control of communicable disease in employees and residents, which includes tuberculosis (TB) screening and provision of a safe and sanitary environment for residents and employees.

(A) If employees contract a communicable disease that is transmissible to residents through food handling or direct resident care, the employee must be excluded from providing these services as long as a period of communicability is present.

(B) The facility must maintain evidence of compliance with local and/or state health codes or ordinances regarding employee and resident health status.

(C) The facility must screen all employees for TB within two weeks of employment and annually, according to Centers for Disease Control and Prevention (CDC) screening guidelines. All persons who provide services under an outside resource contract must, upon request of the facility, provide evidence of compliance with this requirement.

(D) All residents should be screened upon admission and after exposure to TB, in accordance with the attending physician's recommendations and CDC guidelines.

(5) Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(6) Universal precautions must be used in the care of all residents.

(o) Access to residents. The facility must allow an employee of DADS or an employee of a local authority into the facility as necessary to provide services to a resident.

(p) Restraints. All restraints for purposes of behavioral management, staff convenience, or resident discipline are prohibited. Seclusion is prohibited.

(1) As provided in §92.125(a)(3) of this chapter (relating to Resident's Bill of Rights and Provider Bill of Rights), a facility may use physical or chemical restraints only:

(A) if the use is authorized in writing by a physician and specifies:

(i) the circumstances under which a restraint may be used; and

(ii) the duration for which the restraint may be used; or

(B) if the use is necessary in an emergency to protect the resident or others from injury.

(2) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) could not reasonably have been anticipated; and

(D) is not addressed in the resident's service plan.

(3) Except in a behavioral emergency, a restraint must be administered only by qualified medical personnel.

(4) A restraint must not be administered under any circumstance if it:

(A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(B) impairs the resident's breathing by putting pressure on the resident's torso;

(C) interferes with the resident's ability to communicate; or

(D) places the resident in a prone or supine position.

(5) If a facility uses a restraint hold in a circumstance described in paragraph (2) of this subsection, the facility must use an acceptable restraint hold.

(A) An acceptable restraint hold is a hold in which the individual's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (4) of this subsection.

(B) After the use of restraint, the facility must:

(i) with the resident's consent, make an appointment with the resident's physician no later than the end of the first working day after the use of restraint and document in the resident's record that the appointment was made; or

(ii) if the resident refuses to see the physician, document the refusal in the resident's record.

(C) As soon as possible but no later than 24 hours after the use of restraint, the facility must notify one of the following persons, if there is such a person, that the resident has been restrained:

(i) the resident's legally authorized representative; or

(ii) an individual actively involved in the resident's care, unless the release of this information would violate other law.

(D) If, under the Health Insurance Portability and Accountability Act, the facility is a "covered entity," as defined in 45 Code of Federal Regulations (CFR) §160.103, any notification provided under subparagraph (C)(ii) of this paragraph must be to a person to whom the facility is allowed to release information under 45 CFR §164.510.

(6) In order to decrease the frequency of the use of restraint, facility staff must be aware of and adhere to the findings of the resident assessment required in subsection (c) of this section for each resident.

(7) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(8) A facility must not discharge or otherwise retaliate against:

(A) an employee, resident, or other person because the employee, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(B) a resident because someone on behalf of the resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

(q) Accreditation status. If a license holder uses an on-site accreditation survey by an accreditation commission instead of a licensing survey by DADS, as provided in §92.11(c)(2) and §92.15(j) of this chapter (relating to Criteria for Licensing; and Renewal Procedures and Qualifications), the license holder must provide written notification to DADS within five working days after the license holder receives a notice of change in accreditation status from the accreditation commission. The license holder must include a copy of the notice of change with its written notification to DADS.

(r) Vaccine Preventable Diseases.

(1) Effective September 1, 2012, a facility must develop and implement a policy to protect a resident from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224.

(2) The policy must:

(A) require an employee or a contractor providing direct care to a resident to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(B) specify the vaccines an employee or contractor is required to receive in accordance with paragraph (1) of this subsection;

(C) include procedures for the facility to verify that an employee or contractor has complied with the policy;

(D) include procedures for the facility to exempt an employee or contractor from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(E) for an employee or contractor who is exempt from the required vaccines, include procedures the employee or contractor must follow to protect residents from exposure to disease, such as the use of protective equipment, such as gloves and masks, based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(F) prohibit discrimination or retaliatory action against an employee or contractor who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions

by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action;

(G) require the facility to maintain a written or electronic record of each employee's or contractor's compliance with or exemption from the policy;

(H) include disciplinary actions the facility may take against an employee or contractor who fails to comply with the policy.

(3) The policy may:

(A) include procedures for an employee or contractor to be exempt from the required vaccines based on reasons of conscience, including religious beliefs; and

(B) prohibit an employee or contractor who is exempt from the required vaccines from having contact with residents during a public health disaster, as defined in Texas Health and Safety Code, §81.003 (relating to Communicable Diseases).

(s) A DADS employee must not retaliate against an assisted living facility, an employee of an assisted living facility, or a person in control of an assisted living facility for:

(1) complaining about the conduct of a DADS employee;

(2) disagreeing with a DADS employee about the existence of a violation of this chapter or a rule adopted under this chapter; or

(3) asserting a right under state or federal law.

§92.42. Guardianship Record Requirements.

(a) A facility must request, from a resident's legally authorized representative or the person responsible for the resident's support, a copy of the current court order:

(1) appointing a guardian for a resident or a resident's estate; and

(2) letters of guardianship for a resident.

(b) A facility must request the court order and letters of guardianship:

(1) when a facility admits an individual; and

(2) when the facility becomes aware a guardian is appointed after the facility admits a resident.

(c) A facility must request an updated copy of the court order and letters of guardianship at each annual assessment and retain documentation of any change.

(d) A facility must make at least one follow-up request within 30 days after the facility makes a request in accordance with subsection (b) and (c) of this section if the facility has not received:

(1) a copy of the court order and letters of guardianship; or

(2) a response that there is no court order or letters of guardianship.

(e) A facility must keep in the resident's record:

(1) documentation of the results of the request for the court order and letters of guardianship; and

(2) a copy of the court order and letters of guardianship.

§92.51. Licensure of Facilities for Persons with Alzheimer's Disease.

(a) Any facility that [which] advertises, markets, or otherwise promotes that the facility or a distinct part of the facility provides specialized care for persons with Alzheimer's disease or related disorders

must be certified under this subchapter. Use of advertising terms such as "medication reminders or assistance," "meal and activity reminders," "escort service," or "short-term memory loss, confusion, or forgetfulness" will not trigger a requirement for certification as an Alzheimer's facility.

(b) The facility must be licensed as a Type B facility.

(c) Application for certification must be made on forms prescribed by DADS and must include the fee as described in §92.4(c) of this chapter (relating to Licensing Fees).[:]

[(1) the fee as described in §92.20(b) of this chapter (relating to License Fees); and]

[(2) a disclosure statement, using DADS' form, describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders, which includes the pre-admission process, the admission process, discharge and transfer, planning and implementation of care, change in condition issues, staff training on dementia care, the physical environment, and staffing. The disclosure statement must be updated and submitted to DADS as needed to reflect changes in special services for residents with Alzheimer's disease or related disorders.]

(d) The facility must not exceed the maximum number of residents specified on the certificate.

(e) A certificate must be posted in a prominent location for public view.

(f) A certificate is valid for two years from the effective date of approval by DADS[, except as provided in paragraph (1) of this subsection].

[(1) For two years beginning September 1, 2008, an Alzheimer's facility with a facility identification number that ends in an odd number (1, 3, 5, 7, or 9) must submit an application to renew its certification as an Alzheimer's facility in accordance with this section. The facility's first renewal certificate issued beginning September 1, 2008, is valid for one year, and subsequent renewal certificates are valid for two years.]

[(2) An Alzheimer's facility with a facility identification number that ends in an even number (0, 2, 4, 6, or 8) must submit an application to renew its certification as an Alzheimer's facility in accordance with this section. The facility's renewal certificates are valid for two years.]

(g) A certificate will be cancelled upon change of ownership and if DADS finds that the certified unit or facility is not in compliance with applicable laws and rules. A facility must remove a cancelled certificate from display and advertising, and the certificate must be surrendered to DADS upon request.

§92.53. *Standards for Certified Alzheimer's Assisted Living Facilities.*

(a) Manager qualifications and training.

(1) The manager of the certified Alzheimer facility or the supervisor of the certified Alzheimer unit must be 21 years of age, and have:

(A) an associate's degree in nursing, health care management;

(B) a bachelor's degree in psychology, gerontology, nursing, or a related field; or

(C) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working with persons with dementia.

(2) The manager or supervisor must complete six hours of annual continuing education regarding dementia care.

(b) Staff training.

(1) All staff members must receive four hours of dementia-specific orientation prior to assuming any job responsibilities. Training must cover, at a minimum, the following topics:

(A) basic information about the causes, progression, and management of Alzheimer's disease;

(B) managing dysfunctional behavior; and

(C) identifying and alleviating safety risks to residents with Alzheimer's disease.

(2) Direct care staff must receive 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must cover:

(A) providing assistance with the activities of daily living;

(B) emergency and evacuation procedures specific to the dementia population;

(C) managing dysfunctional behavior; and

(D) behavior management, including prevention of aggressive behavior and de-escalation techniques, or fall prevention, or alternatives to restraints.

(3) Direct care staff must annually complete 12 hours of in-service education regarding Alzheimer's disease. One hour of annual training must address behavior management, including prevention of aggressive behavior and de-escalation techniques, or fall prevention, or alternatives to restraints. Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Additional suggested topics include:

(A) assessing resident capabilities and developing and implementing service plans;

(B) promoting resident dignity, independence, individuality, privacy and choice;

(C) planning and facilitating activities appropriate for the dementia resident;

(D) communicating with families and other persons interested in the resident;

(E) resident rights and principles of self-determination;

(F) care of elderly persons with physical, cognitive, behavioral and social disabilities;

(G) medical and social needs of the resident;

(H) common psychotropics and side effects; and

(I) local community resources.

(c) Staffing. A facility must employ sufficient staff to provide services for and meet the needs of its Alzheimer's residents. In large facilities or units with 17 or more residents, two staff members must be immediately available when residents are present.

(d) Alzheimer's Assisted Living Disclosure Statement form. A facility must use the disclosure statement form and update it as needed to reflect changes in special services the facility provides to residents with Alzheimer's disease or related disorders.

(e) [(d)] Pre-admission. The facility must establish procedures, such as an application process, interviews, and home visits, to

ensure that prospective residents are appropriate and their needs can be met.

(1) Prior to admitting a resident, facility staff must discuss and explain the disclosure statement with the family or responsible party.

(2) The facility must give the required DADS disclosure statement to any individual seeking information about the facility's care or treatment of residents with Alzheimer's disease or a related disorder.

(f) [(e)] Assessment. The facility must make a comprehensive assessment of each resident within 14 days of admission and annually. The assessment must include the items listed in §92.41(c)(1)(A) - (T) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities).

(g) [(f)] Service plan. Facility staff, with input from the family, if available, must develop an individualized service plan for each resident, based upon the resident assessment, within 14 days of admission. The service plan must address the individual needs, preferences, and strengths of the resident. The service plan must be designed to help the resident maintain the highest possible level of physical, cognitive, and social functioning. The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.

(h) [(g)] Activities. A facility must encourage socialization, cognitive awareness, self-expression, and physical activity in a planned and structured activities program. Activities must be individualized, based upon the resident assessment, and appropriate for each resident's abilities.

(1) The activity program must contain a balanced mixture of activities addressing cognitive, recreational, and activity of daily living (ADL) needs.

(A) Cognitive activities include, but are not limited to, arts, crafts, story telling, poetry readings, writing, music, reading, discussion, reminiscences, and reviews of current events.

(B) Recreational activities include all socially interactive activities, such as board games and cards, and physical exercise. Care of pets is encouraged.

(C) Self-care ADLs include grooming, bathing, dressing, oral care, and eating. Occupational ADLs include cleaning, dusting, cooking, gardening, and yard work. Residents must be allowed to perform self-care ADLs as long as they are able to promote independence and self worth.

(2) Residents must be encouraged, but never forced, to participate in activities. Residents who choose not to participate in a large group activity must be offered at least one small group or one-on-one activity per day.

(3) Facilities must have an employee responsible for leading activities.

(A) Facilities with 16 or fewer residents must designate an employee to plan, supply, implement, and record activities.

(B) Facilities with 17 or more residents must employ, at a minimum, an activity director for 20 hours weekly. The activity director must be a qualified professional who:

(i) is a qualified therapeutic recreation specialist or an activities professional who is eligible for certification as a therapeutic recreation specialist, therapeutic recreation assistant, or an activities professional by a recognized accrediting body, such as the National Council for Therapeutic Recreation Certification, the National

Certification Council for Activity Professionals, or the Consortium for Therapeutic Recreation/Activities Certification, Inc.; or

(ii) has two years of experience in a social or recreational program within the last five years, one year of which was full-time in an activities program in a health care setting; or

(iii) has completed an activity director training course approved by the National Association for Activity Professionals or the National Therapeutic Recreation Society.

(4) The activity director or designee must review each resident's medical and social history, preferences, and dislikes, in determining appropriate activities for the resident. Activities must be tailored to the residents' unique requirements and skills.

(5) The activities program must provide opportunities for group and individual settings. On weekdays, each resident must be offered at least one cognitive activity, two recreational activities and three ADL activities each day. The cognitive and recreational activities (structured activities) must be at least 30 minutes in duration, with a minimum of six and a half hours of structured activity for the entire week. At least an hour and a half of structured activities must be provided during the weekend and must include at least one cognitive activity and one physical activity.

(6) The activity director or designee must create a monthly activities schedule. Structured activities should occur at the same time and place each week to ensure a consistent routine within the facility.

(7) The activity director or designee must annually attend at least six hours of continuing education regarding Alzheimer's disease or related disorders.

(8) Special equipment and supplies necessary to accommodate persons with a physical disability or other persons with special needs must be provided as appropriate.

(i) [(H)] Physical plant. Alzheimer's units, if segregated from other parts of the Type B facility with approved security devices, must meet the following requirements within the Alzheimer's unit:

(1) Resident living area(s) must be in compliance with §92.62(m)(3) of this chapter (relating to General Requirements).

(2) Resident dining area(s) must be in compliance with §92.62(m)(4) of this chapter.

(3) Resident toilet and bathing facilities must be in compliance with §92.62(m)(2) of this chapter.

(4) A monitoring station must be provided within the Alzheimer's unit with a writing surface such as a desk or counter, chair, task illumination, telephone or intercom, and lockable storage for resident records.

(5) Access to at least two approved exits remote from each other must be provided in order to meet the Life Safety Code requirements.

(6) In large facilities, cross corridor control doors, if used for the security of the residents, must be similar to smoke doors, which are each 34 inches in width and swing in opposite directions. A latch or other fastening device on a door must be provided with a knob, handle, panic bar, or other simple type of releasing device.

(7) An outdoor area of at least 800 square feet must be provided in at least one contiguous space. This area must be connected to, be a part of, be controlled by, and be directly accessible from the facility.

(A) Such areas must have walls or fencing that do not allow climbing or present a hazard and meet the following requirements. These minimum dimensions do not apply to additional fencing erected along property lines or building setback lines for privacy or to meet requirements of local building authorities.

(i) Minimum distance of the enclosure fence from the building is 8 feet if the fence is parallel to the building and there are no window openings;

(ii) Minimum distance of the enclosure fence (parallel with building walls) from bedroom windows is 20 feet if the fencing is solid and 15 feet from bedroom windows if the fencing is open; or

(iii) For unusual or unique site conditions, areas of enclosure may have alternate configurations with DADS approval.

(B) Access to at least two approved exits remote from each other must be provided from the enclosed area in order to meet the Life Safety Code requirements.

(C) If the enclosed area involves a required exit from the building, the following additional requirements must be met:

(i) A minimum of two gates must be remotely located from each other if only one exit is enclosed. If two or more exits are enclosed by the fencing and entry access can be made at each door, a minimum of one gate is required.

(ii) The gate(s) must be located to provide a continuous path of travel from the building exit to a public way, including walkways of concrete, asphalt, or other approved materials.

(iii) If gate(s) are locked, the gate nearest the exit from the building must be locked with an electronic lock that operates the same as electronic locks on control doors and/or exit doors and is in compliance with the National Electrical Code for exterior exposure. Additional gates may also have electronic locks or may have keyed locks provided staff carry the keys. All gates may have keyed locks, provided all staff carry the keys, and the outdoor area has an area of refuge which:

(I) extends beyond a minimum of 30 feet from the building; and

(II) the area of refuge allows at least 15 square feet per person (resident, staff, visitor) potentially present at the time of a fire.

(8) Locking devices may be used on the control doors provided the following criteria are met:

(A) The building must have an approved sprinkler system and an approved fire alarm system to meet the licensing standards.

(B) The locking device must be electronic and must be released when any one of the following occurs:

(i) activation of the fire alarm or sprinkler system;

(ii) power failure to the facility; or

(iii) activation of a switch or button located at the monitoring station and at the main staff station.

(C) A key pad or buttons may be located at the control doors for routine use by staff.

(9) Locking devices may be used on the exit doors provided:

(A) the locking arrangements meet §5-2.1.6 of the Life Safety Code; or

(B) the following criteria are met:

(i) The building must have an approved sprinkler system and an approved fire alarm system to meet the licensing standards.

(ii) The locking device must be electro-magnetic; that is, no type of throw-bolt is to be used.

(iii) The device must release when any one of the following occurs:

(I) activation of the fire alarm or sprinkler system;

(II) power failure to the facility; or

(III) activation of a switch or button located at the monitoring station and at the main staff station.

(iv) A key pad or buttons may be located at the control doors for routine use by staff.

(v) A manual fire alarm pull must be located within five feet of each exit door with a sign stating, "Pull to release door in an emergency."

(vi) Staff must be trained in the methods of releasing the door device.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (210) 619-8292



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER A. PURCHASED HEALTH SERVICES

###### DIVISION 35. REIMBURSEMENT ADJUSTMENTS FOR POTENTIALLY PREVENTABLE EVENTS

###### 1 TAC §§354.1445, §354.1446

Proposed amended §§354.1445 and §354.1446, published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4081), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on January 4, 2016.  
TRD-201600012



## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 43 TAC §§215.1, §215.2

Proposed amended §§215.1 and §215.2, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505965



###### 43 TAC §§215.3 - 215.6

Proposed repeal of §§215.3 - 215.6, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505966



##### SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

###### 43 TAC §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, 215.58

Proposed amended §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56 and 215.58, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505967



###### 43 TAC §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50 - 215.54, 215.57

Proposed repeal of §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50 - 215.54 and 215.57, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505968



##### SUBCHAPTER C. LICENSES, GENERALLY

###### 43 TAC §§215.81 - 215.85, 215.87 - 215.89

Proposed amended §§215.81 - 215.85 and 215.87 - 215.89, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt

the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505969



#### **43 TAC §215.86**

Proposed repeal of §215.86, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505970



### **SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS**

#### **43 TAC §§215.101, 215.103 - 215.106, 215.108 - 215.119**

Proposed amended §§215.101, 215.103 - 215.106 and 215.108 - 215.119, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505971



#### **43 TAC §215.107**

Proposed repeal of §215.107, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505972



### **SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS**

#### **43 TAC §§215.131, 215.132, 215.135, 215.137 - 215.141, 215.144 - 215.159**

Proposed amended §§215.131, 215.132, 215.135, 215.137 - 215.141 and 215.144 - 215.159, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt the proposal within six months of

publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505973



#### **43 TAC §§215.136, 215.142, 215.143**

Proposed repeal of §§215.136, 215.142 and 215.143, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505974



### **SUBCHAPTER F. LESSORS AND LEASE FACILITATORS**

#### **43 TAC §§215.171, 215.173 - 215.181**

Proposed amended §§215.171 and 215.173 - 215.181, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505975



#### **43 TAC §215.172**

Proposed repeal of §215.172, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505976



### **SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS**

#### **43 TAC §§215.201 - 215.210**

Proposed amended §§215.201 - 215.210, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505977



## SUBCHAPTER H. ADVERTISING

### 43 TAC §§215.241 - 215.261, 215.263 - 215.271

Proposed amended §§215.241 - 215.261 and 215.263 - 215.271, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505978



### 43 TAC §215.262

Proposed repeal of §215.262, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505979



## SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

### 43 TAC §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, 215.314 - 215.317

Proposed amended §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311 and 215.314 - 215.317, published in the June

19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505980



### 43 TAC §§215.309, 215.312, 215.313

Proposed repeal of §§215.309, 215.312 and 215.313, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201505981



## SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

### 43 TAC §§215.500 - 215.503

Proposed amended §§215.500 - 215.503, published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on December 29, 2015.

TRD-201505982



*Kassidy Rymel*  
*7th Grade*



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 12. WEIGHTS AND MEASURES SUBCHAPTER B. DEVICES

##### 4 TAC §12.11

The Texas Department of Agriculture (Department) adopts amendments to §12.11, concerning calibration requirements for commercial liquid measuring devices used in commercial motor fuel sales, without changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8081). The amendment requires liquid measuring devices used by consumers to fuel motor vehicles to be calibrated by a service technician registered with the Department not later than the facility's weights and measures registration renewal date in 2019, and every two years thereafter.

One comment was received from the Texas Food and Fuel Association (TFFA) in opposition to the proposed amendment. In their comment, TFFA claims that the Department's compliance rate of 96% is actually higher than what is being reported because the National Institute of Standards and Technology (NIST) tolerances are not being recognized. The Department has determined that the compliance rate for retail fuel pumps is 94% (according to inspections performed over the last three fiscal years) and it should be noted that pumps that fall outside of the NIST tolerance in the consumer's favor are not used in the compliance rate calculation. The Department does not believe pumps that are set in the consumer's favor (i.e., giving away fuel) should be used in the compliance rate calculation because doing so would mischaracterize the compliance rate from a consumer protection perspective, as a reasonable consumer would likely not view a pump that was giving away fuel as non-compliant.

TFFA asserts that the Department has failed to comply with Texas Government Code §2006.002, regarding consideration of economic impact on small or micro-economic businesses. The Department disagrees with this comment and responds by stating that the costs associated with the adopted amendments are based on many factors that the Department does not regulate or cannot determine (i.e., meter calibration fees or travel and other service trip surcharges). Therefore, the Department cannot determine the anticipated costs to micro-businesses, small businesses, or individuals required to comply with the rule.

TFFA also asserts that the Department will not be able to effectively ensure compliance with the adopted rule because the annual weights and measures registration will not be tied to the calibration requirement. The Department points out that enforcement will be achieved through analysis of the electronic reporting

data submitted by licensed service companies and scheduling enforcement inspections accordingly, thus boosting compliance with the rule while expanding consumer protection.

TFFA states that the rule will exacerbate an already tight labor market for qualified licensed service technicians because a significant portion of these individuals are not conducting fuel pump calibrations, notwithstanding their licensure for performing these activities. The Department is unable to substantiate this statement, as the Department does not gather this type of information about individual businesses. However, the Department believes that supply and demand will stabilize a labor market imbalance should one occur. Furthermore, the Department has provided a two-year delay in implementation of the rule in order to allow licensed service companies to make appropriate increases in staffing levels to meet the increased demand for services.

While the Department acknowledges TFFA's concerns regarding the rule's impact, the Department believes the changes are necessary for the operation of the program to provide the best service possible at a reasonable cost to the regulated industries while ensuring that the public is afforded the protections the Department statutorily required to, and does provide.

The adoption is pursuant to the Texas Agriculture Code, §13.002 which designates the Department as the agency responsible for weights and measures regulations.

The code affected by the proposal is Chapter 13 of the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 28, 2015.

TRD-201505960

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Effective date: January 17, 2016

Proposal publication date: November 20, 2015

For further information, please call: (512) 463-4075



## TITLE 13. CULTURAL RESOURCES

### PART 7. STATE PRESERVATION BOARD

## CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

### 13 TAC §§111.25, 111.27, 111.34 - 111.47

The State Preservation Board (board) adopts amendments to §111.25 and §111.27 and new §§111.34 - 111.47, concerning rules and regulations of the board. The amendments and new rules are adopted without changes to the text as proposed in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4501).

The amendments clarify procedures of the board related to monuments and memorials on the Capitol Grounds and regulate animals on the Capitol Grounds. The new rules are necessary to comply with statutory requirements.

The amendment to §111.25 clarifies the type of legislative authorization required for a new monument or memorial to be constructed within the Capitol complex. The amendment to §111.27 prohibits visitors from bringing livestock on the Capitol grounds unless authorized by the board or needed for security purposes.

New §§111.34 - 111.44 regulate the safe movement and parking of vehicles in the Capitol complex. Texas Government Code §411.063 transferred authority over the safe movement and parking of vehicles in the Capitol complex from the Department of Public Safety to the board. The adopted rules are based on the rules that previously regulated the safe movement and parking of vehicles in the Capitol complex as rules of the Department of Public Safety. New §111.45 clarifies the board's sick leave pool procedures. New §111.46 clarifies the bid procedures of the board. New §111.47 clarifies the negotiation and mediation procedures of the board.

The board received no comments concerning the amended and new rules.

The amendments and new rules are adopted under Texas Government Codes §§443.007(b), 411.063, 661.002, 2156.005, and 2260.0052. Texas Government Code §443.007(b) authorizes the board to adopt rules concerning the buildings, their contents, and their grounds. Texas Government Code §411.063 authorizes the board to adopt rules for the safe movement and parking of vehicles within the Capitol complex. Texas Government Code §661.002 directs the board to adopt rules and prescribe procedures relating to the operation of the agency sick leave pool. Texas Government Code §2156.005 authorizes state agencies making purchases to adopt the comptroller's rules related to bid opening and tabulation. Texas Government Code §2260.0052 authorizes state agencies to adopt rules related to negotiation and mediation of certain contract disputes.

No other statutes, articles or codes are affected by the amendments and new rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600019

John Sneed

Executive Director

State Preservation Board

Effective date: January 24, 2016

Proposal publication date: July 17, 2015

For further information, please call: (512) 463-4180

## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 130. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) adopts new §§130.32, 130.68-130.72, 130.117-130.122, 130.144, 130.166, 130.211, 130.234, 130.262, 130.263, 130.285, 130.313, 130.314, 130.343, 130.367, 130.388, 130.389, 130.419, 130.465, and 130.466, concerning Texas essential knowledge and skills (TEKS) for career and technical education (CTE). The sections are adopted without changes to the proposed text as published in the August 7, 2015 issue of the *Texas Register* (40 TexReg 4999) and will not be republished. The adoption adds new second-level practicum courses in 19 TAC Chapter 130, Subchapters A-E and G-P, and a new Advanced Marketing course in 19 TAC Chapter 130, Subchapter N, for implementation in the 2017-2018 school year. The adopted effective date of these new sections is August 28, 2017.

**REASONED JUSTIFICATION:** In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject. Accordingly, CTE TEKS review committees worked from June-October 2014 and provided the SBOE with recommendations for revisions to the CTE TEKS. Due to the number of CTE courses included in the CTE TEKS review, the SBOE divided the adoption of the CTE TEKS revisions into two portions for review and approval in 2015.

At its April 2015 meeting, as part of its review and approval of the revised CTE TEKS, the SBOE directed the Texas Education Agency (TEA) staff to prepare a new second-level practicum course for each proposed practicum in order to provide an option to districts to award up to three credits for a practicum. The SBOE also directed TEA staff to develop a new Marketing Dynamics course.

The SBOE approved the new second-level practicum courses in proposed new 19 TAC §§130.32, 130.68-130.72, 130.117-130.122, 130.144, 130.166, 130.211, 130.234, 130.262, 130.263, 130.285, 130.313, 130.314, 130.343, 130.367, 130.388, 130.419, 130.465, and 130.466 and a new Advanced Marketing course in proposed new 19 TAC §130.389 for first reading and filing authorization at its July 2015 meeting and for second reading and final adoption at its September 2015 meeting.

The adopted new second-level practicum courses provide districts with added flexibility to offer capstone courses in CTE that will best prepare students for postsecondary success. The adopted new Advanced Marketing course provides districts with an additional marketing course to offer more course options for students.

**SUMMARY OF COMMENTS AND RESPONSES.** No public comments were received on the Advanced Marketing Course. Following is a summary of the public comment received and

the corresponding response regarding the proposed new second-level practicum courses.

Comment. The Vocational Agriculture Teachers Association expressed concern that extended practicum courses had not been developed for the Career Preparation courses. The commenter stated that not allowing students in these courses to earn up to three credits could affect a significant number of schools in Texas and could possibly limit the effectiveness of the courses.

Response. The SBOE agreed that an extended Career Preparation course should be added to the CTE TEKS and requested that TEA staff prepare TEKS for an extended Career Preparation course for action at a future SBOE meeting.

## SUBCHAPTER A. AGRICULTURE, FOOD, AND NATURAL RESOURCES

### 19 TAC §130.32

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 29, 2015.

TRD-201505990

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



## SUBCHAPTER B. ARCHITECTURE AND CONSTRUCTION

### 19 TAC §§130.68 - 130.72

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the

essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. ARTS, AUDIO/VIDEO TECHNOLOGY, AND COMMUNICATIONS

### 19 TAC §§130.117 - 130.122

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez  
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## SUBCHAPTER D. BUSINESS MANAGEMENT AND ADMINISTRATION

### 19 TAC §130.144

**STATUTORY AUTHORITY.** The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

**CROSS REFERENCE TO STATUTORY.** The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER E. EDUCATION AND TRAINING

### 19 TAC §130.166

**STATUTORY AUTHORITY.** The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025,

which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

**CROSS REFERENCE TO STATUTE.** The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER G. GOVERNMENT AND PUBLIC ADMINISTRATION

### 19 TAC §130.211

**STATUTORY AUTHORITY.** The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

**CROSS REFERENCE TO STATUTE.** The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER H. HEALTH SCIENCE

## 19 TAC §130.234

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER I. HOSPITALITY AND TOURISM

### 19 TAC §130.262, §130.263

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

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## SUBCHAPTER J. HUMAN SERVICES

### 19 TAC §130.285

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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## SUBCHAPTER K. INFORMATION TECHNOLOGY

### 19 TAC §130.313, §130.314

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least

six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

**CROSS REFERENCE TO STATUTE.** The new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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## SUBCHAPTER L. LAW, PUBLIC SAFETY, CORRECTIONS, AND SECURITY

### 19 TAC §130.343

**STATUTORY AUTHORITY.** The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

**CROSS REFERENCE TO STATUTE.** The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER M. MANUFACTURING

### 19 TAC §130.367

**STATUTORY AUTHORITY.** The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

**CROSS REFERENCE TO STATUTE.** The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER N. MARKETING

### 19 TAC §130.388, §130.389

**STATUTORY AUTHORITY.** The new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

**CROSS REFERENCE TO STATUTE.** The new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

### 19 TAC §130.419

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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## SUBCHAPTER P. TRANSPORTATION, DISTRIBUTION, AND LOGISTICS

### 19 TAC §130.465, §130.466

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials;

§28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 163. LICENSURE

##### 22 TAC §163.1, §163.2

The Texas Medical Board (Board) adopts amendments to §163.1, concerning Definitions, and §163.2, concerning Full Texas Medical License, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7357). The rules will not be republished.

The amendments to §163.1 add definitions for "Active Duty" and "Armed Forces of the United States" and revise definitions for "Military service member," "Military spouse" and "Military veteran." These amendments are in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendments to §163.2 add language to subsection (d), Alternative Licensing Procedure, expanding subsection (d) to include military service members and military veterans. The amendment also includes language allowing the executive director to waive any prerequisite to obtaining a license for an applicant described in subsection (d)(1) after reviewing the applicant's credentials. These amendments are in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice

of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Medical Board

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## CHAPTER 166. PHYSICIAN REGISTRATION

### 22 TAC §166.1, §166.2

The Texas Medical Board (Board) adopts amendments to §166.1, concerning Physician Registration, and §166.2, concerning Continuing Medical Education, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7359). The rules will not be republished.

The amendment to §166.1 adds new subsection (h) providing that military service members who hold a license to practice in Texas are entitled to two years of additional time to complete any other requirement related to the renewal of the military service member's license. This amendment is in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendments to §166.2 add the abbreviation "AOA" for the American Osteopathic Association to subsection (c). Language is also added to subsection (d) providing that a licensee will be presumed to have complied with the Medical Board continuing medical education requirements under subsection (a)(1) and (3) if meeting the AOA's Osteopathic Continuous Certification (OCC) program requirements. New subsection (p) is added, which provides that a physician who is a military service member may request an extension of time, not to exceed two years, to complete any continuing medical education requirements. This amendment is in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

No comments were received regarding adoption of the amendment to §166.1. The Board received one written comment from the American Osteopathic Association in support of the amendment to §166.2.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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## CHAPTER 171. POSTGRADUATE TRAINING PERMITS

### 22 TAC §171.5

The Texas Medical Board (Board) adopts amendments to §171.5, concerning Duties of PIT Holders to Report, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7361). The rule will not be republished.

The amendments to §171.5 revise subsection (b)(3) by eliminating the word "could" as it relates to a question of the permit holder's impairment.

No comments were received regarding adoption of the amendment.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provide authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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## CHAPTER 172. TEMPORARY AND LIMITED LICENSES

### SUBCHAPTER B. TEMPORARY LICENSES

#### 22 TAC §172.5

The Texas Medical Board (Board) adopts amendments to §172.5, concerning Visiting Physician Temporary Permit, with nonsubstantive changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7362). The text of the rule will be republished.

The Board sought stakeholder input through an email to the Licensure Stakeholder Group on September 25, 2015. No comments were made on the suggested changes to the rule. No comments were incorporated into the proposed rule.

The amendments to §172.5 add language to subsection (a)(2) by requiring an applicant for such permit to have an active medical license in another state, territory, Canadian province, or country and mandates that such license may not be under investigation. Subsections (a)(2) and (b)(1) are further amended to provide that a supervising physician for any Visiting Physician Permit holder may not have an investigation or proceeding pending for the restriction, cancellation, suspension, revocation, or other discipline of the supervising physician's medical license, permit, or authority to practice medicine.

No one appeared to testify at the public hearing held on December 4, 2015 regarding amendments to §172.5. However, the Board received public written comments regarding amendments to §172.5 from the Texas Medical Association (TMA). TMA's comments and the Board's responses are as follows:

**Comment:** TMA believes that this new proposal relating to the requirement that the supervising physician not have a pending investigation would prevent many competent physicians from acting in a supervisory capacity throughout the duration of an investigation, which could be indeterminate time period for a "pending investigation." In essence, the supervising physician would be restricted from supervising a visiting physician during such time period, even though the supervising physician's license is unrestricted.

**Response:** While the Board understands TMA's concerns regarding the net effect of disqualifying a physician who is under "investigation" from supervising a visiting physician and the indeterminate time period a physician may be under such "pending investigation," the Board declines to eliminate this requirement and will err on the side of caution and disqualify a physician from supervising a visiting physician if the physician is under an investigation, regardless of the indeterminate time period such investigation may be pending.

**Comment:** TMA opposes adding the word "investigation" to the list of items that would make a physician ineligible for a visiting temporary physician permit because there is ambiguity as to the meaning of the proposed term "investigation" and how it is defined or interpreted from state to state, territory, province or country.

**Response:** While the Board understands TMA's concerns regarding the varied definition of the term "investigation" across jurisdictions, the Board declines to eliminate the word "investigation" as requested by TMA and will err on the side of caution and disqualify a physician from supervising a visiting physician if the physician is under investigation, regardless of the jurisdiction's interpretation or definition of such term.

**Comment:** TMA comments on an apparent drafting error in the proposed rule in reference to the use of the term "applicant." Proposed §172.5(a)(2)(C)(ii) and §172.5(b)(1)(B)(ii), as published, require that the supervising physician "not have an investigation or proceeding pending against the applicant for the restriction, cancellation, suspension, revocation, or other discipline of the applicant's medical license, permit, or authority to practice medicine" and the term "supervising physician" should be used instead of the word "applicant."

**Response:** The Board agrees with this comment, as it was the intent that the requirements in §172.5(a)(2)(C)(ii) and §172.5(b)(1)(B)(ii) apply to the "supervising physician" not the "applicant." The rule presented to stakeholders and the Board for publication reflected the Board's intent; however, the rule that was published for comment did not reflect the Board's intent.

The Board deleted the reference to "applicant" in subsections (a)(2)(C)(ii) and (b)(1)(B)(ii) as published and replaced it with the word "supervising physician" in order to satisfy the Board's actual intent. The Board determined that such change is nonsubstantive.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

*§172.5. Visiting Physician Temporary Permit.*

(a) Visiting Physician Temporary Permit - General.

(1) The executive director of the board may issue a permit to practice medicine to an applicant who intends to practice under the supervision of a licensed Texas physician, excluding training in post-graduate training programs:

- (A) for educational purposes;
- (B) to practice charity care to underserved populations in Texas;
- (C) in cases of declared emergency disasters;
- (D) for the provision of forensic psychiatric examinations related to criminal matters; or
- (E) for the provision of specialized medical care for which the applying physician has demonstrated good cause for the issuance of the permit.

(2) In order to be determined eligible for a visiting physician temporary permit the applicant must:

- (A) have an active medical license in another state, territory, Canadian province, or country;
- (B) not have any medical license that is under restriction, disciplinary order, probation, or investigation in another state, territory, Canadian province, or country;
- (C) be supervised by a physician who:
  - (i) has an unrestricted license in Texas;
  - (ii) does not have an investigation or proceeding pending for the restriction, cancellation, suspension, revocation, or other discipline of the supervising physician's medical license, permit, or authority to practice medicine; and
  - (iii) has not been the subject of a disciplinary order, unless the order was administrative in nature;

(D) present written verification from the physician who will be supervising the applicant that the physician will provide continuous supervision of the applicant. Constant physical presence of the physician is not required but the physician must remain readily available; and

(E) present written verification from the supervising physician as to the purpose for the requested permit.

(3) Visiting physician temporary permits shall be valid for no more than ten working days and for a specified locale and purpose. The executive director of the board, in his/her discretion, may extend the length of the temporary permit if the applicant shows good cause for why the extended time is needed.

(b) Visiting Physician Temporary Permit - KSTAR.

(1) The executive director of the board may issue a permit to practice medicine to an applicant who intends to participate in the Texas A&M KSTAR program. In order to be determined eligible for a visiting physician temporary permit, the applicant must:

(A) present written verification from the KSTAR program of acceptance into the program;

(B) be supervised by a physician who:

(i) has an unrestricted license in Texas;

(ii) does not have an investigation or proceeding pending for the restriction, cancellation, suspension, revocation, or other discipline of the supervising physician's medical license, permit, or authority to practice medicine; and

(iii) has not been the subject of a disciplinary order, unless the order was administrative in nature;

(C) present written verification from the physician who will be supervising the applicant that the physician will provide continuous supervision of the applicant. Constant physical presence of the physician is not required but the physician must remain readily available; and

(D) not have been convicted of a felony or have any medical license that is or has been under restriction, disciplinary order, or probation in another state, territory, or Canadian province based on a professional boundary violation, unless otherwise determined eligible by the Board.

(2) Visiting physician temporary permits for participation in the KSTAR program shall be valid for the length of the program. The executive director of the board, in his/her discretion, may extend the length of the temporary permit if the applicant shows good cause for why the extended time is needed.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 175. FEES AND PENALTIES

### 22 TAC §175.3, §175.4

The Texas Medical Board (Board) adopts an amendment to §175.3, concerning Penalties, and new §175.4, concerning Fee Exemption for Military Service Member, Military Veteran, or Military Spouse, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7363). The rules will not be republished.

The amendment to §175.3 adds new paragraph (7), providing that a Military Service Member is exempt from any penalty for failing to renew the license in a timely manner if the individual establishes that such failure to timely renew was because the individual was serving as a military service member. This amendment is in accordance with the passage of SB 1307 (84th

Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

New §175.4 is added to Chapter 175, thereby exempting Military Service Members, Military Veterans and Military Spouses from license application fees. This new rule is in accordance with the passage of SB 807 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

No comments were received regarding adoption of the rules.

The amendment and new rule are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 178. COMPLAINTS

### 22 TAC §178.3

The Texas Medical Board (Board) adopts an amendment to §178.3, concerning Complaint Procedure Notification, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7364). The rule will not be republished.

The amendment to §178.3 corrects a reference to the Health and Safety Code in subsection (a)(2).

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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## CHAPTER 183. ACUPUNCTURE

### 22 TAC §183.14

The Texas Medical Board (Board) adopts amendments to §183.14, concerning Acudetox Specialist, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7364). The rule will not be republished.

The amendments to §183.14 add language in subsection (b)(4) to clarify that an Acudetox Specialist shall work under the supervision of a current and active licensed Texas physician or licensed Texas acupuncturist and such supervision shall be registered with the board and updated within 30 days of any change in such supervision. The amendment further adds clarifying language to provide that the Acudetox Specialist shall work pursuant to protocols developed by the Acudetox Specialist and supervising physician or acupuncturist and such protocols shall be agreed upon and signed by the supervising licensee and the acudetox specialist, reviewed and signed at least annually and maintained on site. Subsection (j)(3) is also amended to eliminate an incorrect stated amount related to fees for such certification.

No comments were received regarding adoption of the amendment.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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### 22 TAC §183.25

The Texas Medical Board (Board) adopts new §183.25, concerning Inactive Status License, without changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4306). The rule will not be republished.

The new section governs the creation of an inactive status license for acupuncture license holders with a current registration permit and license in good standing.

No comments were received regarding adoption of the rule.

The new section is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of

medicine in this state; enforce this subtitle; and establish rules related to licensure. The new section is also authorized by Texas Occupations Code Annotated, §205.101.

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### 22 TAC §183.26

The Texas Medical Board (Board) adopts new §183.26, concerning Retired License, without changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4307). The rule will not be republished.

The new section governs the creation of a retired license status for acupuncture license holders who meet certain requirements.

No comments were received regarding adoption of the rule.

The new section is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The new section is also authorized by Texas Occupations Code Annotated, §205.101.

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## CHAPTER 184. SURGICAL ASSISTANTS

### 22 TAC §§184.2, 184.4, 184.6, 184.8, 184.21, 184.25

The Texas Medical Board (Board) adopts amendments to §184.2, concerning Definitions; §184.4, concerning Qualifications for Licensure; §184.6, concerning Licensure Documentation; §184.8, concerning License Renewal; §184.21, concerning Impaired Surgical Assistants; and §184.25, concerning Continuing Education, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7365). The rules will not be republished.

The amendments to §184.2 add definitions for "Active Duty" and "Armed Forces of the United States" and revise definitions for "Military service member," "Military spouse" and "Military veteran." These amendments are in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendments to §184.4 add language to expand subsection (c), Alternative Licensing Procedure, to include military service members and military veterans. The amendment also includes language allowing the executive director to waive any prerequisite to obtaining a license for an applicant described in subsection (c)(1) after reviewing the applicant's credentials. These amendments are in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendment to §184.6 revises language in subsection (b)(3) by arranging existing language to be more clear about the process by which applicants must submit examination verification to the board.

The amendment to §184.8 adds new subsection (h) providing that military service members who hold a license to practice in Texas are entitled to two years of additional time to complete any other requirement related to the renewal of the military service member's license. This amendment is in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendment to §184.21 revises language in subsection (b) so that it eliminates language referencing rehabilitation orders and adds new language in subsection (b) allowing the board to refer impaired surgical assistants to the Texas Physician Health and Program.

The amendment to §184.25 adds language to subsection (c) clarifying that exemptions sought must be based on the licensee personally meeting the qualifying criteria. The amendment also adds new subsection (m) providing that a surgical assistant who is a military service member may request an extension of time, not to exceed two years, to complete any continuing education requirements. This amendment is in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600009

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Executive Director  
Texas Medical Board

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For further information, please call: (512) 305-7016

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## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER F. LIMITATION ON APPRAISED VALUE ON CERTAIN QUALIFIED PROPERTIES

###### **34 TAC §§9.1051 - 9.1054, 9.1059, 9.1060**

The Comptroller of Public Accounts adopts amendments to §9.1052, concerning forms, and §9.1059, concerning annual compliance review, without changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4315). The comptroller adopts amendments to §9.1051, concerning definitions; §9.1053, concerning entity requesting agreement to limit appraised value; §9.1054, concerning school district application review and agreement to limit appraised value; and new §9.1060, concerning agreement for limitation on appraised value, with changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4315).

The amendment to §9.1051, concerning definitions, paragraph (1) changes the definition of agreement to include an explicit reference to the form adopted by reference in §9.1052 of this title for the purpose of clarity. Paragraph (14) changes the definition of "non-qualifying job" to include the requirement that it be a permanent job, corrects a statutory reference and includes a reference to the new qualifying job definition. This definition is also changed to delete the requirement that the job did not exist prior to the application review start date. The Form Agreement requires that non-qualifying jobs meet these requirements after the application approval date so that it conforms to the manner in which the qualifying jobs requirement is implemented. The amendment to the definition of "average weekly wage for manufacturing jobs" in paragraph (21) provides that in the event that the wage authorized by subparagraph (A) is not available, then the wage authorized by subparagraph (B) is the wage. A missing word ("available") is added to the definition of "average weekly wage for non-qualifying jobs" in paragraph (22). Additionally, new paragraph (30) is added to define "qualifying job" that consolidates the requirements of a qualifying job from Tax Code, Chapter 313 into a single definition.

The amendment to §9.1052, concerning forms, identifies forms by the updated form numbers. The form adopted by reference in subsection (a)(5) is being changed in order to correct a prior numbering error. No changes are made to the form. The form adopted by reference in subsection (a)(6), the Texas Economic Development Act Agreement, is being changed to reflect the new form number, update certain statutory references, and provide

greater flexibility to the parties to the agreement. The amendment in subsection (b) updates the form website address. The amendment to subsection (c) clarifies that this subsection applies to the Form Agreement adopted pursuant to this section as well as the application forms adopted pursuant to this section.

The amendments to §9.1053(f), concerning entity requesting agreement to limit appraised value, reduces the number of days for a draft agreement to be submitted to the school district and the comptroller prior to the school board meeting at which an application is considered. This amendment is intended to facilitate prompt application review. Subsection (f) is also amended to delete the provisions in the subsection that identify the terms of the agreement to reduce redundancy and avoid creating conflicts between the provisions of the rules and the Form Agreement.

Amendments are also adopted to §9.1054, concerning school district application review and agreement to limit appraised value. The amendments to subsection (g) delete the provisions that identify the required terms of a value limitation agreement to reduce redundancy and avoid creating conflicts between the provisions of the rules and the Form Agreement. The amendments to subsection (h) are to clarify the requirements for the school district review of a value limitation agreement prior to the start of a deferred qualifying time period in those instances when the school district has approved an agreement that permits the qualifying time period to start more than one year after the date that the application is approved.

The amendments to §9.1059(c), concerning annual compliance review for qualifying jobs and penalties, amend the wage determination for new qualifying jobs to be based on the site where the job is located rather than the location of the school district's administrative office. This amendment is intended to provide more accurate data regarding the job creation requirement.

New §9.1060, concerning agreement for limitation on appraised value, requires the school district and the applicant to implement a limitation on appraised value when the application is approved by executing a Texas Economic Development Agreement, utilizing the Form Agreement.

Seven comments were received regarding adoption of the amendments and the new section.

Matt Larsen with BakerBotts, LLP; John Kennedy with the Texas Taxpayers and Research Association; and the Tax Section of the State Bar of Texas express concern that duplicating the requirements for the Agreement for Limitation on Appraised Value in both §9.1060 and the Form Agreement will create conflict between the terms of the rule and the Form Agreement. The comptroller agrees with this comment and adopts the changes recommended by Mr. Kennedy. Specifically, the list of minimum terms required to be included in an agreement are deleted in §9.1060 and therefore the references in §9.1053(f)(2) and §9.1054(g) to the minimum terms listed in §9.1060 are deleted and replaced by references to §9.1052(a)(6) (the Form Agreement).

The Tax Section of the State Bar of Texas suggests adding links and references to all forms listed in the rules on the comptroller's website to make it easier to find the current version of the forms. The comptroller agrees with this comment and plans to link the forms to the relevant rules on its website.

Mr. Larsen comments that §9.1054(h) does not contain a deadline for the submission of an amendment to the application and the Agreement for Limitation on Appraised Value, but the Form

Agreement contains such a deadline. The comptroller responds that the rule includes a deadline of 180 days, but moving the deadline to the beginning of subsection (h) will improve clarity. The comptroller adopts the addition of timeframe language to match the language used within §10.2.F of the Form Agreement.

Kevin O'Hanlon suggests changing "Exhibit 2" to "Exhibit 3" in the definition of "Applicant's Qualified Investment" in §1.1 of the Form Agreement because Exhibit 3 has been used in previous forms for qualified investments that do not involve land. The comptroller agrees with this comment and adopts this change. The comptroller also adopts a conforming change by renumbering the exhibits.

James W. Wester and Fred A. Stormer with Underwood, Attorneys at Law recommend adding definitions of "Applicable School Finance Law," "Maintenance and Operations Revenue," "Net Tax Savings," and "Revenue Protection Amount" to §1.1 of the Form Agreement. The comptroller responds that §1.1 does not include terms used in Articles IV, V and VI, as the definitions of the terms included in those articles are best addressed by the school district and the applicant in §1.2. The comptroller may provide additional guidance on typically used terms through program guidelines. No additional changes are being made as a result of this comment.

Mr. O'Hanlon suggests changing "Exhibit 3" to "Exhibit 2" in the definition of "Land" in §1.1 of the Form Agreement because Exhibit 2 has been used in previous forms for qualified investments that involve land. The comptroller agrees with this comment and adopts this change. The comptroller also adopts a conforming change by renumbering the exhibits. The comptroller also substitutes "are" for "is" in this definition to correct a grammatical error.

Mr. O'Hanlon recommends inserting language into the definition of "Maintain Viable Presence" in §1.1 of the Form Agreement that indicates that the applicant's retention of the required number of qualifying jobs is "subject to the provisions of §313.0276 of the TEXAS TAX CODE" to clarify that there is a possibility of a statutory job cure. The comptroller responds that the provisions of Tax Code, §313.0276 are solely related to the verification of, and penalty for, failure to create and maintain new qualifying jobs as required by the Act and does not address new qualifying jobs committed on Schedule C or wage requirements for new non-qualifying jobs. Additionally, any potential breaches and remedies are set forth in Article 9 of the Form Agreement. But, the comptroller recognizes that the definition of this term may be too broad. So, instead of adding the reference proposed by Mr. O'Hanlon, the comptroller adopts the following alternative definition that narrows the definition of the term: 'Maintain Viable Presence' means (i) the operation during the term of this Agreement of the facility or facilities for which the tax limitation is granted; and (ii) the Applicant's maintenance of jobs and wages as required by the Act and as set forth in this Agreement."

Mr. Larsen and Wes Jackson with Cummings Westlake, LLC, comment that the definitions of "New Qualifying Jobs" and "New Non-Qualifying Jobs" in §1.1 of the Form Agreement should not indicate that they are created during the qualifying time period. Instead, the words "after the Application Approval Date" should be included in the definitions to comply with the applicable provisions of the Tax Code. The comptroller agrees with this comment and adopts this change.

Mr. Wester and Mr. Stormer recommend changing the definition of "Tax Limitation Amount" in §1.1 of the Form Agreement to in-

dicating that it is a "minimum" amount, not a "maximum" amount. The comptroller responds that "Tax Limitation Amount" is the value limitation for which the qualified property will be valued during the limitation period. As such, this amount is the maximum amount for the appraised value. No additional changes are being made as a result of this comment.

Mr. Wester and Mr. Stormer recommend adding a Tax Year Chart as an exhibit to the Form Agreement and adding a definition of "Tax Year" to §1.1 to support the recommended addition of the chart. The comptroller responds that all key dates related to the project are included in §2.3 and a separate Tax Year Chart is not required. However, if a school district and an applicant agree to include a Tax Year Chart, it may be included in new optional Exhibit 5 and the term "Tax Year" may then be defined in §1.2. The comptroller may choose to provide guidance on typically used terms through program guidelines. An optional Exhibit 5 is being added as a result of this comment.

Mr. O'Hanlon comments that if an applicant chooses the option described in §2.3.D.1.c (now §2.3.D.i.c) of the Form Agreement, a definition of "commencement of business operation" would need to be included in §1.2. In response to this comment, the comptroller changes "business operation" to "Commercial Operation" to mirror the statutory language found in Tax Code, §313.027. The comptroller notes that an applicant and a school district shall include a definition of "Commercial Operation" in §1.1 if the applicant chooses the option described in §2.3.D.i.c.

Mr. Wester and Mr. Stormer suggest revising §2.4.B of the Form Agreement to clarify the ability of a school district to select a limitation amount above the limitation listed in statute. The Comptroller agrees with this comment. As a result, the comptroller removes the reference to Tax Code, §313.027(b) in §2.4.B and instead references Tax Code, §313.027 and §313.054, both of which allow a school district to select a limitation amount greater than the limitation listed in statute.

Mr. O'Hanlon proposes adding a reference to Tax Code, §313.0276 in §§2.5.B, 2.5.C, and 2.5.D of the Form Agreement to address the ability to remedy a failure to create new qualifying jobs as required by statute. The language in Tax Code, §313.0276 relates only to the verification of, and penalty for, failure to create and maintain new qualifying jobs as required by the Act. To reduce redundancy, the comptroller deletes the language of §2.5.C because it is already included as an obligation in the provisions of §2.6.D. Section §2.5.D is therefore renumbered as §2.5.C. The comptroller adds the recommended reference to §2.5.B because it relates to new qualifying jobs. This recommended reference is not being added to the newly renumbered §2.5.C because it does not relate to new qualifying jobs.

Mr. O'Hanlon comments that the exhibit numbers listed in §3.2 and §3.3 of the Form Agreement are inconsistent with the definitions of "Applicant's Qualified Investment" and "Land" in §1.1 of the Form Agreement. The comptroller corrected the exhibit numbers in §1.1, so the exhibit numbers listed in §3.2 and §3.3 are correct. No additional changes are being made as a result of this comment.

Mr. Wester and Mr. Stormer recommend adding template language in Articles IV and V of the Form Agreement. The comptroller responds that the Form Agreement does not include provisions for use in Articles IV, V and VI, as those articles are best addressed by the school district and the applicant. If a school district or an applicant needs sample language for Articles IV

and V, the comptroller may choose to provide assistance through program guidelines. No additional changes are being made as a result of this comment.

Mr. Wester and Mr. Stormer suggest changing the word "amount" to "limit" in §6.2.D of the Form Agreement. The comptroller agrees with this comment and adopts this change.

Mr. O'Hanlon recommends adding an option to allow the Average Daily Attendance (ADA) to float during the length of the agreement instead of being locked in at the time of agreement in §6.2.D of the Form Agreement. The comptroller agrees that the decision regarding whether to lock in the ADA at the time of agreement or allow the ADA to float during the length of the agreement is a decision best made between the school district and the applicant. The comptroller adopts optional language in §6.2.D that will allow the parties to choose between the school district's ADA at the time of agreement or the school district's ADA for the previous school year.

Mr. O'Hanlon comments that §8.6.C of the Form Agreement should not allow the comptroller to amend an agreement to ensure the agreement complies with rules and procedures of the State Auditor. It would be better to make the agreement subject to future rules than to allow the comptroller, a non-signatory, to unilaterally amend the agreement. The comptroller agrees with this comment and adopts language that requires the parties to be "subject to all rules and procedures of the State Auditor acting under the direction of the legislative audit committee."

Mr. O'Hanlon suggests adding "during the Qualifying Time Period," to 9.1.B of the Form Agreement. The comptroller agrees with this comment and adopts this change.

Mr. O'Hanlon recommends making the provisions of §9.1.B of the Form Agreement subject to the cure provisions of Tax Code, §313.0275 by adding references in §9.1.B to Tax Code, §313.0275 and §9.6. The comptroller responds that references to Tax Code, §313.0275 are not necessary because the statute only provides for a penalty if the qualified investment is not made during the qualifying time period. This is not a cure. Failure to make the minimum qualified investment during the qualifying time period, as defined in Tax Code, §313.021 cannot be cured after the end of that period. As such, this material breach cannot be cured through the payment of a penalty as described in Tax Code, §313.0275. Likewise, the reference to §9.6 is not necessary because it relates to a penalty.

Mr. O'Hanlon recommends adding a reference to Tax Code, §313.0276 and §9.7 in §9.1.C of the Form Agreement. The comptroller responds that the provisions of Tax Code, §313.0276 are solely related to the verification of, and penalty for, failure to create and maintain new qualifying jobs as required by the Act and does not address new qualifying jobs committed on Schedule C or wage requirements for new non-qualifying jobs. This failure to create and maintain the number of new qualifying jobs required by the Act is a material breach, regardless of Tax Code, §313.0276; therefore, the reference does not need to be added. Multiple commenters requested the addition of a new §9.7 to allow for a remedy of the material breach in §9.1.C and the comptroller agrees to include an optional provision that will allow the parties to provide for a remedy in the agreement. The new optional §9.7 does not need to be referenced in §9.1.C as this serves only as a listing of events constituting a material breach of agreement. Other provisions in Article 9 address the process to determine if a breach has occurred, notify the applicant of a potential breach, and cure a breach.

Mr. O'Hanlon suggests adding references to Tax Code §313.0276 and §9.7 in §9.1.D and §9.1.E of the Form Agreement. The comptroller responds that references to Tax Code, §313.0276 and new optional §9.7 are not necessary because they are not related to the number of new qualifying jobs committed to in the application nor the wage requirements for non-qualifying jobs. However, the comptroller adds a new optional §9.8 to address concerns raised about the ability to remedy non-compliance with failure to create and maintain new qualifying jobs committed to in Schedule C of the application.

Mr. Larsen suggests deleting §9.1.O because it is "superfluous" and violates Tax Code, §313.0276. The comptroller agrees the provision is superfluous in that the requirements in §9.1.O would not take effect until the applicant is already in material breach of the agreement under §9.1.C. The comptroller adopts this change.

Mr. Larsen comments that the length of time to complete mediation listed in §9.3.A of the Formal Agreement should be increased from 90 days to 180 day after a decision is made to initiate mediation because "90 days is insufficient and such an unreasonable deadline would likely undermine the parties' good-faith attempts to avoid judicial proceedings." The comptroller responds that the time frame for either tendering payment, providing evidence of efforts to cure, or initiating mediation is adequately set forth in the Form Agreement. However, additional time to resolve mediation is necessary if mediation is the selected course. The comptroller revises the language of §9.3 to allow up to 90 days "after the Applicant initiates mediation," rather than 90 days "after receipt of notice of the Board of Trustee's determination of breach."

Mr. Larsen suggests that the time to resolve a dispute in §9.3.B of the Form Agreement should be extended from 90 days to 180 days. In response to this comment, the comptroller adds a reference to the 90 day time period provided in §9.3.A.

Mr. Wester and Mr. Stormer suggest that, in §§9.3.A, 9.3.B, and 10.5, the parties should not be allowed to insert the name of the county: (1) of the senior state district court judge who will appoint a mediator under the Form Agreement; (2) where a legal proceeding may be filed under the Form Agreement; and (3) where venue is proper for any legal proceeding under the Form Agreement. Instead, he suggests that, in each provision, the Form Agreement should specify the county as "the county where the District's central administration office is located." The comptroller responds that current agreement language does not preclude a school district and an applicant from agreeing that the county should be the county where the school district's central administration office is located. This request can be accomplished using the current form. No additional changes are being made as a result of this comment.

Mr. Larsen recommends adding language in §9.3.C, requiring the school district to be responsible for attorney's fees if it loses a dispute, since the applicant is responsible for attorney's fees if it loses a dispute. The comptroller responds that the school district should not be required to pay attorney's fees if it loses a dispute due to limited budgets of districts. No additional changes are being made as a result of this comment.

Mr. Larsen comments that §9.4 should better address the various scenarios that could cause an applicant to be required to pay liquidated damages. The comptroller agrees that it is necessary to conform the time frames and scenarios outlined in §9.3 with those of §9.4. The comptroller makes changes to §9.4 to

achieve this result. Additionally, the comptroller agrees to add a timeframe of 30 days for the applicant to pay the school district liquidated damages in §9.3.A.

Mr. Larsen also recommends putting termination by the school district in the same sentence as the liquidated damages in §9.4.A, so the timing provisions in §9.4.B (now §9.4.D) do not need to be repeated. The comptroller accepts this change. To keep the events detailed in §9.3.A distinct, the comptroller separates them into two subsections and renumbers the subsequent subsections accordingly. Also, the last sentence of §9.4.B (now §9.4.C) is deleted because it is too broad and does not account for the fact that multiple breaches may occur at one time.

Mr. O'Hanlon recommends adding "and Cure," to the title of §9.6. The comptroller responds that §9.6 relates to the penalty imposed if the qualified investment is not made during the qualifying time period detailed in Tax Code, §313.0275. This is not a cure. Failure to make the minimum qualified investment during the qualifying time period, as defined in Tax Code, §313.021 cannot be cured after the end of that period. As such, this material breach cannot be cured through the payment of a penalty as described in Tax Code, §313.0275 and §9.6. No additional changes are being made as a result of this comment.

Mr. O'Hanlon and Mr. Larsen suggest adding new §9.7 relating to a statutory penalty in Tax Code, §313.0276 for inadequate new qualifying jobs as required by the Act. Additionally, Mr. Larsen comments that the school district should have "discretion to treat an agreement as valid until it is rescinded by the Comptroller" under Tax Code, §313.0276(i). The comptroller acknowledges that Tax Code, §313.0276 outlines a process for verification of the minimum qualifying jobs required by the Act and a statutory penalty if the requirement is not met. The comptroller agrees with the comment and adopts changes to give the parties discretion to allow the determination made by the comptroller's office through the penalty process in Tax Code, §313.0276 to also serve as an indicator of breach. However, new optional §9.7 only relates to the breach event in §9.1.C and not to §9.1.D because Tax Code, §313.0276 does not apply to new qualifying jobs committed on Schedule C, just new qualifying jobs required by the Act.

In their comments on a new §9.7, Mr. O'Hanlon and Mr. Larsen recommend adding a new section providing a remedy for other breaches related to failure to create the committed number of new qualifying jobs or failure to pay required wages for non-qualifying jobs. The comptroller responds that Tax Code, §313.0276 only applies to the material breach in §9.1.C, and does not apply to other material breaches listed in §9.1. Tax Code, §313.0276 creates a penalty for failure to comply with statutory job-creation requirements. It does not apply to other Act or agreement requirements. However, the comptroller recognizes that the parties may include a remedy for the material breach event in §9.1.D. The comptroller adopts an optional §9.8, a remedy patterned after the remedy provisions frequently included in agreements for limitation of appraised value executed prior to the adoption of the Form Agreement.

Mr. O'Hanlon and Mr. Larsen suggest changing the amount of time a school district's board of trustees has in which to amend the application and agreement, in §10.2.B.iii of the Form Agreement, from 120 days to 150 days after the request is filed. The comptroller agrees with this comment and adopts this change.

Mr. Larsen recommends amending §10.2 to "make it clear that the certificate of limitation decision will be based on the original 'determining factor' analysis," one that will not be conducted at

the time of the amendment or expiration of the deferral period. In response to this comment, the comptroller adds new subsection E, which clarifies when an additional determination must be made.

Mr. O'Hanlon suggests deleting §10.2.C.iii, which requires any amendment of the application or agreement to "define minimum eligibility requirements for the recipient of limited value" because "any amendment would be subject to the terms of the original agreement." The comptroller agrees with this comment and adopts this change.

Mr. Larsen and Mr. O'Hanlon comment that language needs to be added to address collateral assignments or assignments for the benefit of creditors. The comptroller responds that, although assignments due to loan default or other condition of a lending agreement may occur, the State Auditor's Office (SAO), in their 2014 audit report, expressed concern over allowing value limitation agreements to be assigned to any entity that does not meet the statutory requirements. Specifically, the SAO found that "the agreements did not specify that the new business must be eligible to receive an agreement" or that the "school board approve the transfer of the agreements. As a result, there is a risk that the agreements could be transferred to a business that does not meet the eligibility requirements in Texas Tax Code, Chapter 313." The comptroller included all assignments in the Form Agreement to address the SAO's stated concerns. At the same time, Mr. Larsen expresses concerns that "many financing entities require the ability to succeed to a borrower's rights in the event of a default." Additionally, Mr. O'Hanlon comments that "a deed of Trust or a UCC1 [Uniform Commercial Code Financial Statement] or security interest" are not assignments and the Form Agreement should not require these agreements to go through the amendment process detailed in §10.2. The comptroller notes that other sections of the Form Agreement allow the school district to determine if an applicant meets eligibility requirements under the Act. For example, §8.4 of the Form Agreement requires the applicant to provide information reasonably necessary to determine whether the applicant is in compliance with its rights, obligations or responsibilities under the agreement. The comptroller suggests that, at a minimum, the school district must be notified if the applicant is going to assign its interests so the school district can request data under §8.4 to determine compliance. The comptroller substantially adopts the language proposed by Mr. O'Hanlon and also adds §10.3.C, which requires that the school district and the comptroller are appropriately notified of any assignment to a creditor and requires the creditor to comply with the other provisions of the agreement.

Mr. O'Hanlon suggests deleting language in §10.9.C, indicating that the agreement is the joint product of the parties, because this statement is not wholly accurate since the agreement is a form agreement. The comptroller agrees with this comment and adopts this change.

Mr. Kennedy and Mr. Larsen comment that the language of §10.9.D (now §10.9.C) improperly causes the Form Agreement and the comptroller's rules to prevail over the executed agreement. They also recommend that the Act should be applied as it existed at the time the agreement was executed and changes to the Act should not apply to the agreement. The comptroller agrees that the Form Agreement should not prevail over the executed agreement and therefore has deleted the provision in §10.9 relating to the Form Agreement. However, since the comptroller's rules prevail over the executed agreement, language requiring the comptroller's rules to prevail are being retained in the

Form Agreement. But the provision is changed so that only the rules that exist at the time the Agreement is executed (except as allowed in the definition of qualified property in §1) will prevail over the executed agreement. The agreement should not limit the legislature's authority to make changes that affect the parties to this agreement, such as changes to compliance and verification requirements under the Act. As such, the comptroller does not accept changes that would prevent future changes to the Act from prevailing over the executed agreement.

Mr. O'Hanlon suggests deleting the language in §10.14.A and §10.14.B indicating that the school district and its officials do not intend to give any economic benefit because that is what the agreement does. The comptroller adopts these changes.

The comptroller corrects typographical errors in the rules by substituting a colon for a semicolon in §9.1051(14)(A), and adding "and" to the end of §9.1054(h)(1)(A).

The comptroller makes the following non-substantive changes to the Form Agreement:

1. To correct typographical errors, deletes "and" from the third "WHEREAS" clause; changes "§313.021(2)" to "§313.021(3)" in the eleventh "WHEREAS" clause; removes the underline from the last "WHEREAS" clause; changes "obligation" to "obligations" in §2.3.F; substitutes "maintained" for "maintain" in §2.5.B; adds "\$" in §2.5.C (formerly §2.5.D); deletes "the" from between "protect" and "future" in §2.6.A and §9.1.F; adds a colon between "STATEMENT" and the quotation mark in §2.6.E; between the words "describe" and "Exhibit 2," changes "on" to "in" in §3.2; changes "operations begin" to "operation begins" in §3.4; deletes "subsection" in §3.5; changes "Sections" to "Section" in §9.5; deletes "the" from between "of" and "any" in §10.3.A; changes "§10.8" to "§10.7" in §10.7; and renumbers "§10.15" as "§10.16";
2. to ensure consistency throughout the Form Agreement, changes "Insert Name of County" to "Insert County Name" in the definition of "County" in §1.1; changes "by the end of the Qualifying Time Period" to "during the Qualifying Time Period" in §2.5.A; deletes "above" and "below" after certain section numbers; changes "form agreement" to "Agreement" in Articles IV, V, and VI; standardizes the numbering of paragraphs and the capitalization of terms; adds "the" before the words "District," "Applicant," "Application," and "Comptroller," where appropriate; and lists all statutory references and references to portions of the Form Agreement using the same format;
3. changes references to specific sections in the Form Agreement, when needed, to account for renumbered sections;
4. changes the article number in Articles IV, V, and VI to "§1.2 of this Agreement" to correctly instruct the parties as to where to add any additional definitions and adds brackets around the text of these articles to indicate that they include instructions or optional language;
5. clarifies that certain language in §6.1 must be used if no Supplemental Payments will be made;
6. deletes the web address listed in §8.2 because it is subject to change;
7. deletes the reference to §9.1060(19) in §9.1.Q (now §9.1.P) because that provision is no longer included in the adopted rules;
8. inserts "of" between "behalf" and "the District" in §6.1 and "receipt of" between "Within seven (7) days of" and "such document" in §10.11.A to supply words that were missing from the original agreement;

9. corrects punctuation errors;
10. substitutes "RFP" for "Agreement" in §10.15 to correct a reference; and
11. removes "on the dates indicated on the form," in §9.1.J relating to failure to submit reports to remove a possible breach that was inadvertently created in the agreement (removing this requirement gives a school district the discretion to accept a report that is a few days late without it constituting a breach).

The amendments and new section are adopted under Tax Code, §313.027, which authorizes the comptroller to prescribe the form of an agreement for limitation on appraised value, and §313.031, which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 313.

The amendments and new section implement Tax Code, Chapter 313.

*§9.1051. Definitions.*

The following phrases, words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Tax Code, Chapter 313 and not defined in this subchapter shall have the meanings provided by Tax Code, Chapter 313.

(1) **Agreement**--The written agreement between the governing body of a school district and the approved applicant on the form adopted by reference in §9.1052 of this title (relating to Forms) to implement a limitation on the appraised value for school district maintenance and operations ad valorem property tax purposes on an entity's qualified property, required by Tax Code, §313.027(d).

(2) **Applicant**--An entity that has applied for a limitation on appraised value for school district maintenance and operations ad valorem property tax purposes on the entity's property as provided by Tax Code, Chapter 313.

(3) **Application**--An application for limitation of appraised value limitation for school district maintenance and operations ad valorem property tax purposes on an entity's qualified property on the form adopted by reference in §9.1052 of this title, the schedules attached thereto, and the documentation submitted by an entity for the purpose of obtaining an agreement for a limitation on appraised value from a school district.

(4) **Application amendment**--Information submitted by an applicant intended to be considered as part of or in support of the application that amends by replacing information that was previously submitted by applicant.

(5) **Application supplement**--Information submitted by an applicant intended to be considered as part of or in support of the application that has not been previously submitted.

(6) **Approved applicant**--An applicant whose application has been approved by a school district for a limitation on appraised value agreement according to the provisions of Tax Code, Chapter 313, including any assignees of that applicant.

(7) **Application review start date**--The later date of either the date on which the school district issues its written notice that an applicant has submitted a completed application or the date on which the comptroller issues its written notice that an applicant has submitted a completed application.

(8) **Appraisal district**--The county appraisal district that would appraise the property which is the subject of an application.

(9) **Appraised value**--The value of property as defined by Tax Code, §1.04(8).

(10) **Completed application**--An application in the form and number and containing all the information required pursuant to §9.1053 of this title (relating to Entity Requesting Agreement to Limit Appraised Value) that has been determined by the school district and the comptroller to include all minimum requirements for consideration.

(11) **Comptroller**--The Texas Comptroller of Public Accounts or the designated representative of the Texas Comptroller of Public Accounts acting on behalf of the comptroller.

(12) **Entity**--Any entity upon which a tax is imposed by Tax Code, §171.001 including a combined group as defined by Tax Code, §171.0001(7) or members of a combined group, provided however, an entity as defined herein does not include a sole proprietorship, partnership or limited liability partnership.

(13) **Economic Development and Analysis Division or ED&A**--The Economic Development Division and Analysis Division of the comptroller's office, or the division of the comptroller's office responsible for the administration of Tax Code, Chapter 313, acting through the designated division director or a representative thereof.

(14) **Non-qualifying job**--A permanent position of employment to perform work:

(A) that includes at a minimum the following requirements:

- (i) that is based on the qualified property;
- (ii) that is in direct support of activity identified in Tax Code, §313.024(b);
- (iii) for at least 1,600 hours a year;
- (iv) over which the applicant has significant degree

of control of:

- (I) the creation of the job;
- (II) the job description;
- (III) the job characteristics or performance of the job through either a business, contractual or vendor relationship; and

(B) is not a qualifying job as that term is defined in Tax Code, §313.021(3) and these rules.

(15) **Qualified investment**--Property that meets the requirements of Tax Code, §313.021(1).

(16) **Qualified property**--Land, new building, or new improvement erected or affixed to the land after the application review start date, or eligible tangible personal property first placed in service after the application review start date that:

(A) meets the requirements of Tax Code, §313.021(2), and that is used either as an integral part, or as a necessary auxiliary part, in manufacturing, research and development, a clean coal project, an advanced clean energy project, renewable energy electric generation, electric power generation using integrated gasification combined cycle technology, nuclear electric power generation, a Texas Priority Project, or a computer center;

(B) is clearly distinguished from any existing property and clearly distinguished from any proposed property that is not a new improvement;

(C) is separate from, and not a component of, any existing property;

(D) if buildings or improvements, did not exist before the application review start date or if tangible personal property, was first placed in service after the application review start date;

(E) is not used to renovate, refurbish, upgrade, maintain, modify, improve, or functionally replace existing buildings or existing improvements;

(F) does not replace or modify existing buildings other than expansion of an existing building; and

(G) is not used solely for the transportation of product prior to the commencement, or subsequent to the completion, of an applicable qualifying activity described in subparagraph (A) of this paragraph.

(17) School district--A school district that has received an application for a limitation on appraised value pursuant to Tax Code, Chapter 313 or the designated representative of the school district acting on behalf of the school district.

(18) SOAH--State Office of Administrative Hearings.

(19) Substantive document--A document or other information or data in electronic media determined by the comptroller to substantially involve or include information or data significant to an application, the evaluation or consideration of an application, or the agreement or implementation of an agreement for limitation of appraised value pursuant to Tax Code, Chapter 313. The term includes, but is not limited to, any application requesting a limitation on appraised value and any amendments or supplements, any economic impact evaluation made in connection with an application, any agreement between applicant and the school district and any subsequent amendments or assignments, any school district written finding or report filed with the comptroller as required under this subchapter, and any completed Annual Eligibility Report (Form 50-772A) submitted to the comptroller.

(20) Agreement holder--An entity that has executed an agreement with a school district.

(21) Average weekly wage for manufacturing jobs--Either the average weekly wage:

(A) for all jobs primarily engaged in activities described in Sectors 31 - 33 of the 2007 North American Industry Classification System in a county as identified by the Texas Workforce Commission's Quarterly Employment and Wages (QCEW) webpage at <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>; or

(B) for all manufacturing jobs or if the information for subparagraph (A) of this paragraph is not available, as determined by data published annually by the Texas Workforce Commission for the purposes of Tax Code, Chapter 313 for each Council of Government Region, based on Bureau of Labor Statistics, Texas Occupational Employment and Wages (OES) data, as it is posted at <http://www.tracer2.com/admin/uploadedPublications/COGWages.pdf>.

(22) Average weekly wage for non-qualifying jobs--The average weekly wage as identified by the Texas Workforce Commission Quarterly Employment and Wages (QCEW) average weekly wages for all private industries for the most recent four quarterly periods for which data is available at the time that an application is deemed complete, as it is posted at <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>.

(23) First placed in service--The first use of the property by the agreement holder.

(24) New improvement--A building, structure, or fixture that, after the application review start date:

(A) is a discrete unit of property erected on or affixed to land eligible to be qualified property; and

(B) is not erected or affixed as part of maintenance, renovation, refurbishment, improvement, modification, or upgrade of existing property, nor is newly added or proposed to be added property functionally replacing existing property, provided however that a proposed improvement may be considered a new improvement if it is an addition to an existing building that will contain new tangible personal property that did not exist before the application review start date.

(25) Per capita income--Per capita money income in the past 12 months as determined by the United States Census Bureau and reported at its website <http://quickfacts.census.gov/qfd/states/48000.html>.

(26) Strategic investment area--An area that is:

(A) a county within this state with unemployment above the state average and per capita income below the state average;

(B) an area within this state that is a federally designated urban enterprise community or an urban enhanced enterprise community; or

(C) a defense economic readjustment zone designated under Government Code, Chapter 2310.

(27) Texas Economic Development Act Agreement--The form, adopted by reference in §9.1052 of this title, which provides a template for the terms of an agreement to implement a limitation on appraised value on property within a school district and that has the title Agreement For Limitation On Appraised Value Of Property For School District Maintenance And Operations Taxes.

(28) Texas Priority Project--A project on which the applicant commits to place in service qualified investment of more than \$1 billion during the qualifying time period, based on the comptroller review of the application submitted by the school district.

(29) Unemployment--The most recent calendar year unemployment rate, not seasonally adjusted, as determined by the Labor Market & Career Information Department (LMCI) of the Texas Workforce Commission and reported at its website <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Labforce>.

(30) Qualifying job--A permanent position of employment that includes at a minimum the following requirements:

(A) provides work for at least 1600 hours a year;

(B) is in direct support of activity identified in Tax Code, §313.024(b);

(C) is based on the qualified property;

(D) is a job over which the applicant has significant degree of control of:

(i) the creation of the job;

(ii) the job description;

(iii) the job characteristics or performance of the job through either a business, contractual or vendor relationship;

(E) is covered by a group health benefit plan for which the applicant offers to pay at least 80% of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage;

(F) pays at least 110% of the county average weekly wage for manufacturing jobs in the county where the job is located;

(G) that has not been transferred from another part of the state; and

(H) that has not been created to replace a previous employee.

§9.1053. *Entity Requesting Agreement to Limit Appraised Value.*

(a) Initial application contents. To request a limitation on appraised value for school district maintenance and operations ad valorem tax purposes pursuant to Tax Code, Chapter 313, an applicant shall file a completed application with the school district in which the qualified property will be located.

(1) A completed application shall consist of, at a minimum, the following items:

(A) the comptroller's current application form and Schedules A1, A2, B, C and D attached to the application form with all information boxes filled in with the information on which applicant intends to rely including but not limited to:

(i) a specific and detailed description of the proposed qualified property to which the appraised value limitation will apply sufficient to clearly distinguish the subject property from property to which the limitation does not apply and to establish that the property meets the criteria of qualified property pursuant to these rules and Tax Code, §313.021(2);

(ii) a specific and detailed description of the investment described in Tax Code, §313.021(1) that is proposed to be made in the property subject to the appraised value limitation and sound, good faith estimates of the dollar value of intended investment sufficient to establish that the investment meets minimum criteria for qualified investment pursuant to Tax Code, §313.023 or §313.053 if applicable, during the proposed qualifying time period;

(iii) if the land upon which the qualified property will be located contains existing improvements or tangible personal property, a specific and detailed description of the tangible personal property, buildings, or permanent, non-removable building components (including any affixed to or incorporated into real property) on the land that is sufficient to distinguish existing property from the proposed new improvements and any proposed property that is not new improvements which may include maps, surveys, appraisal district values and parcel numbers, inventory lists, property lists, model and serial numbers of existing property, or other information of sufficient detail and description to locate all existing property within the boundaries of the real property which is subject to the agreement; provided however, that the date of appraisal shall be within 15 days of the date the application is received by the school district;

(iv) the total number of any jobs related to construction or operation of the facility that the applicant chooses to disclose for the purpose of calculating the economic impact of the project;

(v) the total number of qualifying jobs the applicant commits to create and maintain during the full term of the agreement and a schedule which identifies the number of qualifying jobs created and maintained in each year of the agreement;

(vi) the wages, salaries, and benefits applicant commits to provide for each qualifying job;

(vii) the total number of non-qualifying jobs the applicant estimates it will create and maintain during the full term of the agreement and a schedule which identifies the number of non-qualifying jobs created and maintained in each year of the agreement;

(viii) the average wages the applicant estimates it will provide for non-qualifying jobs;

(ix) a statement:

(I) that for the purposes of this statement, "payments to the school district" include any and all payments or transfers of things of value made to the school district or to any person or persons in any form if such payment or transfer of thing of value being provided is in recognition of, anticipation of, or consideration for the agreement for limitation on appraised value; and

(II) as to whether:

(-a-) the amount of any and all payments or transfers made to the school district may result in payments that are or are not in compliance with Tax Code, §313.027(i); or

(-b-) as to whether the method for determining the amount may result in payments to the school district that are or are not in compliance with Tax Code, §313.027(i); and

(x) a description of the real property on which the intended investment will be made, identified additionally by the county appraisal district parcel number;

(B) such other written documents containing information on which applicant relies to qualify for and obtain a limitation on appraised value pursuant to Tax Code, Chapter 313;

(C) such other written documents containing information reasonably requested by either the school district or the comptroller which shall be provided within 20 days of the date of the request, provided however the applicant may request up to 10 additional days to provide the requested information;

(D) information identifying the applicant, and if applicant is a combined group, identifying each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement, by:

(i) official name, street address, city, county, state and mailing address, if different from the street address, of the official place of business of the applicant and, if the applicant is a combined group, of each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement;

(ii) designation of an authorized representative for the applicant and, if the applicant is a combined group, for each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement; and

(iii) for each authorized representative, and if the applicant is a combined group for each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement, provide telephone number, email address, street address, city, county, state, and mailing address if different from the street address;

(E) the signature of applicant's authorized representative(s) by which applicant confirms and attests to the truth and accuracy of the information submitted in the application to the best knowledge and belief of applicant and its representative(s);

(F) the total application fee required by the school district with which the application will be filed;

(G) a statement as to whether or not the project is an expansion of an existing operation on the land which will become qualified property, and if so, a description of the nature of the existing operation, and the nature of the expansion, including an explanation of how the expansion affects or interacts with current operations;

(H) a statement specifying the beginning date of the limitation period, which must be January 1 of the first tax year that begins after one of the following:

- (i) the date of the completed application;
- (ii) the date of the end of the qualifying time period, provided however that such date will begin no later than the beginning of the limitation period; or
- (iii) the date commercial operations are to begin at the site of the project;

(I) a statement regarding the location and nature of other facilities that the applicant operates in the state, and a detailed description of any such facilities that will provide inputs to or use outputs from the project that is the subject of the application;

(J) a detailed description of any state and local incentives for which the applicant intends to apply; and

(K) any information that the applicant requests the comptroller to consider in making the determination under Tax Code, §313.026(c)(2) that the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in the state, which may include:

- (i) other locations not in Texas that the applicant considered or is considering for the project;
- (ii) capital investment and return on investment information in comparison with other alternative investment opportunities; or
- (iii) information related to the applicant's inputs, transportation and markets.

(2) The completed application contents shall be provided in the following formats:

(A) one original hard copy of the completed application in a three ring binder with tabs separating each section of the documents submitted; and

(B) an electronically digitized copy, formatted in searchable pdf format or other format acceptable to the comptroller, certified by the applicant as containing the identical information, maps, and schedules as the original hard copy. The digitized copy shall include:

- (i) schedules A1, A2, B, C, and D in Microsoft Excel format; and
- (ii) high-resolution maps and graphics (300 dpi or higher).

(3) The application shall be submitted in any manner acceptable to the comptroller.

(b) Optional application requests. An applicant may include in an application:

(1) a request that the school district waive the requirement of Tax Code, §313.021(2)(A)(iv)(b) or §313.051(b), whichever is applicable, to create new jobs. In order for a completed application to include a job waiver request, applicant shall submit:

(A) a specific request to waive the job requirement of the applicable Tax Code section included with the application that includes all the minimum requirements set forth in subsection (a) of this section; and

(B) separated and clearly marked within the application materials, documentation on which applicant intends to rely that demonstrates that the applicable jobs creation requirement of the applicable Tax Code section exceeds the industry standard for the number

of employees reasonably necessary for the operation of the facility of applicant that is described in the application; or

(2) a request to begin the qualifying time period on a date that is after the date that the application is approved. In order for a completed application to include a qualifying time period deferral request, applicant shall submit:

(A) specific information identifying the requested qualifying time period within an application that includes all the minimum requirements set forth in subsection (a) of this section; and

(B) all relevant economic information that is related to the impact of the investment during the proposed qualifying time period, the proposed limitation period, and a period of time after the limitation period considered appropriate by the comptroller.

(c) Application changes. At the request of the school district or the comptroller, or with the prior approval of the school district and the comptroller, applicant may submit an application amendment or application supplement at any time after the submission of the initial application. In order to be considered as part of the application, the application amendment or supplement shall:

(1) be submitted in the same form or schedule and manner as the information was initially submitted or should have been initially submitted;

(2) include a date for the submission and a sequential number identifying the number of submissions made by applicant;

(3) have the signature of the authorized representative(s) by which applicant confirms and attests to the truth and accuracy of the information submitted in the application amendment or supplement, as applicable, to the best knowledge and belief of applicant and its representative(s); and

(4) be submitted before the 120th day after the application was accepted by the school district or within another time period as provided in writing by the comptroller.

(d) Authorized representative(s). The person(s) identified in the application as applicant's authorized representative(s) shall serve as the person(s) to whom all correspondence and notifications from the school district and comptroller shall be sent. Notwithstanding subsection (c) of this section, applicant may change its authorized representative(s) if applicant submits to the school district and the comptroller a letter that provides the name of the new authorized representative(s), street and mailing address, telephone number, and official title, if any.

(e) Information confidentiality. At the time that applicant submits its application, application amendment, or application supplement, applicant may request that all or parts of such document not be posted on the internet and not otherwise be publicly released. In order to make such request, applicant shall:

(1) submit a written request that:

(A) specifically lists each document or portion of document and each entry in any form prescribed by the comptroller that applicant contends is confidential; and

(B) identifies specific detailed reasons stating why applicant believes each item listed should be considered confidential and identifies any relevant legal authority in support of the request;

(2) segregate the documents which are subject to the request from the other documents submitted with the application, application amendment, or application supplement that are not subject to the request; and

(3) adequately designate the documents subject to the request as "confidential."

(f) Continued eligibility for value limitation. In order to obtain and continue to receive a limitation on appraised value pursuant to Tax Code, Chapter 313, an applicant shall:

(1) have a completed application approved by the governing body of the school district in compliance with §9.1054(f) of this title (relating to School District Application Review and Agreement to Limit Appraised Value);

(2) at least 20 days prior to the meeting at which the governing body of the school district is scheduled to consider the application, provide to the school district and the comptroller a Texas Economic Development Act Agreement, as specified in §9.1052(a)(6) of this title, with terms acceptable to the applicant;

(3) if the applicant includes a combined group or members of the combined group, have the agreement executed by the authorized representative of each member of the combined group that owns a direct interest in property subject to the proposed agreement by which such members are jointly and severally liable for the performance of the stipulations, provisions, terms, and conditions of the agreement;

(4) comply with all stipulations, provisions, terms, and conditions of the agreement for a limitation on appraised value executed with the school district, this subchapter, and Tax Code, Chapter 313;

(5) be and remain in good standing under the laws of this state and maintain legal status as an entity, as defined in this subchapter;

(6) owe no delinquent taxes to the state;

(7) maintain eligibility for limitation on appraised value pursuant to Tax Code, Chapter 313; and

(8) provide to the school district, the comptroller, and the appraisal district any change to information provided in the application, including but not limited to:

(A) changes of the authorized representative(s);

(B) changes to the location and contact information for the approved applicant including all members of the combined group participating in the limitation agreement;

(C) copies of any valid assignments of the agreement and contact information for authorized representative(s) of any assignees.

*§9.1054. School District Application Review and Agreement to Limit Appraised Value.*

(a) Application fee. Prior to accepting an application for an agreement for limitation on appraised value pursuant to Tax Code, Chapter 313, Subchapter B, the governing body of a school district by official action shall establish a reasonable nonrefundable application fee to be paid by an applicant who applies to the school district for a limitation on the appraised value of applicant's property under such subchapter. The amount of the fee shall not exceed the estimated cost to the district of processing and acting on an application. The total fee shall be paid at time the application is submitted to the school district. Any fees not accompanying the original application shall be considered supplemental payments.

(b) Initial review. If a school district receives a completed application, amended application, or supplemental application for property tax limitation within its boundaries, the school district shall submit to the comptroller, not later than 7 days after receiving it, a copy of the following documents:

(1) the application;

(2) an economic analysis, if any;

(3) application amendment;

(4) application supplement; and

(5) proof of payment of the total filing fee required by the school district.

(c) Acting on a completed application. If the governing body of the school district by official action elects to consider an application and determines that the application received is a completed application, the school district shall:

(1) provide written notice to the applicant and to the comptroller, with a copy to the appraisal district, that the school district has received and will be considering a completed application. The notice shall include:

(A) the date on which the application was received;

(B) the date on which the governing body elected to consider the application; and

(C) the date on which the school district determined that applicant has submitted a completed application;

(2) at the time the school district provides notice of a completed application, deliver to the comptroller:

(A) a copy of the completed application including all material required by §9.1053(a) and, if applicable (b), of this title (relating to Entity Requesting Agreement to Limit Appraised Value); and

(B) a request to the comptroller to provide an economic impact evaluation;

(3) if the school district maintains a generally accessible Internet web site, provide a clear and conspicuous link on its web site to the Internet web site maintained by the comptroller where substantive documents for the value limitation application for such school district are posted;

(4) on request of the comptroller, provide such written documents containing information requested by the comptroller as necessary for the consideration of a limitation on appraised value pursuant to Tax Code, Chapter 313 within 20 days of the date of the request; and

(5) not later than 151 days after the application review start date, present to the governing body of the school district for its consideration:

(A) the completed application that has been submitted by applicant;

(B) the economic impact analysis submitted by the comptroller;

(C) the comptroller certificate for a limitation or written explanation for not issuing a certificate; and

(D) a limitation agreement that includes all stipulations, provisions, terms, and conditions required by subsection (g) of this section that is acceptable to the applicant.

(d) Extending time period for action. The governing body of the school district may extend the time period to approve a completed application required by subsection (c)(5) of this section only if:

(1) either:

(A) an economic impact analysis has not been submitted to the school district by the comptroller; or

(B) by agreement with applicant; and

(2) notice of the extension is provided to the comptroller within 7 days of the decision to provide the extension.

(e) Application changes after the notice of completed application. If a school district receives an amended application or a supplemental application from an applicant after the school district has prepared or sent written notice that the applicant has submitted a completed application, the school district shall either:

(1) reject the amended application, supplemental application, or application, in whole or in part, and discontinue consideration of any submission by applicant;

(2) with the written concurrence of the comptroller, consider the completed application, as amended or supplemented, before the 151st day from the application review start date; or

(3) review the documents submitted by applicant, issue an amended written notice of a completed application, and present the amended application to the governing body of the school district in the manner and time period authorized by subsection (c)(5) of this section.

(f) Application with comptroller certificate for a limitation. When presented a completed application pursuant to subsection (c)(5) of this section for which the comptroller has submitted a comptroller certificate for a limitation, the governing body of the school district shall either:

(1) by majority vote adopt a written resolution approving the application which shall include:

(A) written findings:

(i) as to each criterion listed in §9.1055(d)(3)(B) - (D) of this title (relating to Comptroller Application Review and Agreement to Limit Appraised Value);

(ii) as to the criteria required by Tax Code, §313.025(f-1) if applicable;

(iii) that the information in the application is true and correct; and

(iv) that applicant is eligible for the limitation on the appraised value of the entity's qualified property;

(B) a determination that granting the application is in the best interest of the school district and this state; and

(C) designate and direct a representative of the governing body of the school district to execute the agreement for property tax limitation presented by the approved applicant that complies with this subchapter and Tax Code, Chapter 313;

(2) by majority vote disapprove the application; or

(3) take no official action and the application shall be considered disapproved on the 151st day after the application review start date.

(g) Agreement for limitation on appraised value. Pursuant to the provisions of Tax Code, Chapter 313 and this subchapter, in order to implement a limitation on the appraised value for school district maintenance and operation tax purposes on the approved applicant's qualified property that has been approved by the governing body of the school district, at the time of the approval of the application, the authorized representative of the school district and the approved applicant shall execute a Texas Economic Development Act Agreement, as specified in §9.1052(a)(6) of this title.

(h) Limitation agreement with deferred qualifying time period. If an agreement for limitation on appraised value includes a provision in which the qualifying time period starts more than one year after the date that the application is approved, no earlier than 180 days and no later than 90 days prior to the start of the deferred qualifying time period, the school district shall:

(1) provide the comptroller:

(A) copies of any documents or other information received from the applicant; and

(B) after reviewing documents and information provided by the applicant, either:

(i) a written acknowledgment of receiving the application amendment or supplement; or

(ii) a statement that no such amendment or supplement has been submitted; and

(2) if the comptroller provides:

(A) a comptroller certificate for a limitation with conditions different from the existing agreement, the governing body shall hold a meeting and determine whether to amend the agreement to include the conditions required by the comptroller or terminate the agreement; or

(B) a written explanation of the comptroller's decision not to re-issue a certificate, the school district shall terminate the agreement.

(i) Compliance and enforcement.

(1) The school district shall provide to the comptroller:

(A) any documents that reasonably appear to be substantive documents as defined in this subchapter; and

(B) within seven days of executing the agreement, a copy of the executed agreement and any attachments thereto.

(2) The school district shall provide a copy of the executed agreement to the appraisal district.

(3) The school district shall comply with and enforce the stipulations, provisions, terms, and conditions of the agreement for limitation of the appraised value, this subchapter, and Tax Code, Chapter 313.

(4) To determine and obtain compliance with each agreement, for each calendar year during the term of the agreement the school district shall require the approved applicant to submit:

(A) either:

(i) the information necessary to complete the Annual Eligibility Report, adopted by reference in §9.1052 of this title (relating to Forms); or

(ii) a completed Annual Eligibility Report, adopted by reference in §9.1052 of this title;

(B) a completed Job Creation Compliance Report (Form 50-825), adopted by reference in §9.1052 of this title; and

(C) any information required by the State Auditor Office or its designee.

*§9.1060. Agreement for Limitation on Appraised Value.*

Pursuant to the provisions of Tax Code, Chapter 313 and this subchapter, in order to implement a limitation on the appraised value for school district maintenance and operation tax purposes on the approved applicant's qualified property that has been approved by the governing body

of the school district, at the time of the approval of the application, the authorized representative of the school district and the approved applicant shall execute a Texas Economic Development Act Agreement, as specified in §9.1052(a)(6) of this title (relating to Forms).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2016.

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

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Proposal publication date: July 3, 2015

For further information, please call: (512) 475-0387



Howdy



*Anna Barker, 6th Grade*

# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Office of Consumer Credit Commissioner

### Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 7, Part 5, Chapter 84, concerning Motor Vehicle Installment Sales. Chapter 84 contains Subchapter A, concerning General Provisions; Subchapter B, concerning Retail Installment Contract; Subchapter C, concerning Insurance and Debt Cancellation Agreements; Subchapter D, concerning Acquisition of Contract or Balance; Subchapter E, concerning Holder's Rights, Duties, and Limitations; Subchapter F, concerning Licensing; Subchapter G, concerning Examinations; and Subchapter H, concerning Retail Installment Sales Contract Provisions.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to [laurie.hobbs@occc.texas.gov](mailto:laurie.hobbs@occc.texas.gov). Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201600083

Leslie L. Pettijohn  
Commissioner

Office of Consumer Credit Commissioner  
Filed: January 6, 2016



## Adopted Rule Reviews

Texas Education Agency

### Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring; Subchapter BB, Memoranda of Understanding; Subchapter EE, Accreditation Status, Standards, and

Sanctions; and Subchapter FF, Commissioner's Rules Concerning the Job Corps Diploma Program, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 97, Subchapters AA, BB, EE, and FF, in the July 24, 2015 issue of the *Texas Register* (40 TexReg 4825).

Relating to the review of 19 TAC Chapter 97, Subchapter AA, the TEA finds that the reasons for adopting §97.1001 and §97.1005 continue to exist and readopts the rules. The TEA finds that the reasons do not exist for adopting §97.1004, Adequate Yearly Progress. Adequate Yearly Progress statuses are no longer assigned to Texas public schools as a result of a conditional waiver from the United States Department of Education. At a later date, the TEA plans to propose the repeal of §97.1004. The TEA received one comment related to the review of Subchapter AA. Following is a summary of the public comment received and the corresponding agency response.

Comment: Disability Rights Texas commented that the reasons for adopting 19 TAC §97.1005, Performance-Based Monitoring Analysis System, continue to exist. Disability Rights Texas also offered recommendations specific to the Special Education Representation Indicator adopted under §97.1005 and suggested readopting §97.1005 with certain amendments.

Agency Response: The agency agrees that the reasons for adopting 19 TAC §97.1005 continue to exist. The recommendations specific to the Special Education Representation Indicator are outside the scope of the proposed rule review. As stated in §97.1005(c), "the specific criteria and calculations used in the PBMAS are established annually by the commissioner of education and communicated to all school districts and charter schools." The annual adoption and communication to school districts for the 2015-2016 school year have already occurred. TEA will consider comments received on future rule actions to §97.1005 as those rule actions occur.

Relating to the review of 19 TAC Chapter 97, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter BB. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 97, Subchapter EE, the TEA finds that the reasons for adopting Subchapter EE continue to exist and readopts the rules. No changes to Subchapter EE are necessary as a result of the review. The TEA received one comment related to the review of Subchapter EE. Following is a summary of the public comment received and the corresponding agency response.

Comment: Disability Rights Texas commented that the reasons for adopting 19 TAC §97.1072, Residential Facility Monitoring, continue to exist. Disability Rights Texas also offered recommendations on

ways the commissioner of education could improve and strengthen the rule.

Agency Response: The agency agrees that the reasons for adopting 19 TAC §97.1072 continue to exist and that residential facility monitoring still needs to be conducted to meet the agency's obligation to students with disabilities residing in residential facilities. In alignment with the TEA's Rider 70 report to the 84th Texas Legislature, 2015, and in considering the recommendations of the Residential Facility Monitoring Workgroup sessions held in the spring of 2015, the agency will take the recommendations for improvement into consideration.

Relating to the review of 19 TAC Chapter 97, Subchapter FF, the TEA finds that the reasons for adopting Subchapter FF continue to exist and

readopts the rule. The TEA received no comments related to the review of Subchapter FF. At a later date, the TEA may propose an amendment to §97.2001, Job Corps Diploma Program Accountability Procedures, to update the manual adopted in rule.

This concludes the review of 19 TAC Chapter 97.

TRD-201506005

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: December 29, 2015



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/11/16 - 01/17/16 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/11/16 - 01/17/16 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 01/01/16 - 01/31/16 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 01/01/16 - 01/31/16 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

<sup>3</sup> For variable rate commercial transactions only.

TRD-201600054

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 5, 2016

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is February 16, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the ap-

plicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on February 16, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: At the Tower RV and Boat Storage LLC; DOCKET NUMBER: 2015-1323-MLM-E; IDENTIFIER: RN108632704; LOCATION: Leander, Williamson County; TYPE OF FACILITY: commercial property; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; and 30 TAC §213.4(a)(1) by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing the construction of any regulated activity over the Edwards Aquifer Recharge and Contributing Zones; PENALTY: \$15,875; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: Blanchard Refining Company LLC; DOCKET NUMBER: 2015-1609-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.20(3) and §116.715(c)(7), Texas Health and Safety Code, §382.085(b) and Flexible Permit Numbers 47256 and PSDTX402M3, Special Conditions Numbers 1 and 30, by failing to prevent unauthorized emissions; PENALTY: \$25,000; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: CAPE CARANCAHUA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-1509-PWS-E; IDENTIFIER: RN101245249; LOCATION: Palacios, Jackson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit properly completed well completion data for review and approval by the executive director prior to placing a well into service as a public water supply source; PENALTY: \$50; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: Cardinal Meadows Improvement District; DOCKET NUMBER: 2015-1456-PWS-E; IDENTIFIER: RN101441418; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM), based on the locational running annual average and failing to provide public notification and provide a copy of the notification to the executive director regarding the failure to comply with the MCL for TTHM for the first quarter of 2015; PENALTY: \$172; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576;

REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: City of Cisco; DOCKET NUMBER: 2015-1159-MWD-E; IDENTIFIER: RN102186533; LOCATION: Cisco, Eastland County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014877001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0014877001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, by failing to comply with permitted effluent limitations; 30 TAC §305.125(17) and TPDES Permit Number WQ0014877001, Monitoring and Reporting Requirements Number 1, by failing to submit complete monthly effluent monitoring results as specified in the permit; and 30 TAC §305.125(17) and TPDES Permit Number WQ0014877001, Sludge Provisions, by failing to timely submit the annual sludge report by September 30, 2014; PENALTY: \$19,975; Supplemental Environmental Projects offset amount of \$19,975; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Newton; DOCKET NUMBER: 2015-1427-MLM-E; IDENTIFIER: RN101412104; LOCATION: Newton, Newton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(p)(2), by failing to provide the executive director with a written list of all the operators and operating companies that the public water system employs on an annual basis; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's four pressure tanks for 2013; 30 TAC §290.46(f)(2) and (3)(A)(iv), by failing to provide facility records to the executive director at the time of an investigation; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements and is maintained at each water treatment plant and at a central location; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of Well Numbers 1 and 2; 30 TAC §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution for testing for chlorine leakage which is readily accessible outside the chlorination room; 30 TAC §290.46(j), by failing to utilize a customer service inspection (CSI) certificate form approved by the executive director or receive approval from the executive director for any CSI certificate form which varies from the specified format prior to being placed in use; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.46(v), by failing to ensure that all electrical wiring at the facility is securely installed in compliance with a local or national electrical code; 30 TAC §290.45(b)(1)(A)(ii) and Texas Health and Safety Code, §341.0315(c), by failing to provide a pressure tank capacity of 50 gallons per connection; 30 TAC §290.46(j), by failing to complete a CSI certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe cross connections or other potential contamination hazards exists; and 30 TAC §288.20(c), by failing to

review and update as appropriate, the drought contingency plan at least every five years; PENALTY: \$1,864; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2015-0592-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County; TYPE OF FACILITY: polymer production plant; RULES VIOLATED: 30 TAC §§115.354(4), 115.781(e), and 122.143(4), Federal Operating Permit (FOP) Number O1606, Special Terms and Conditions (STC) Number 1A, and Texas Health and Safety Code (THSC), §382.085(b), by failing to monitor a relief valve within 24 hours after venting to the atmosphere; 30 TAC §116.110(b) and §122.143(4), FOP Number O1606, General Terms and Conditions, and THSC, §382.085(b), by failing to obtain proper authorization prior to modifications to existing permitted facilities; and 30 TAC §§115.722(c)(1), 116.115(c) and 122.143(4), FOP Number O1606, STC Number 18, New Source Review Permit Number 4477, Special Conditions Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$50,563; Supplemental Environmental Project offset amount of \$25,281; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: JACK WHITE ENTERPRISES, INCORPORATED; DOCKET NUMBER: 2015-1249-MSW-E; IDENTIFIER: RN106481393; LOCATION: Livingston, Polk County; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: \$3,562; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Millen Oil Company, Incorporated; DOCKET NUMBER: 2015-1555-PST-E; IDENTIFIER: RN102396884; LOCATION: McKinney and Dallas, Collin and Dallas Counties; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: \$4,606; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201600065  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: January 6, 2016



#### Notice of Hearing

Quinton Logeman

SOAH Docket No. 582-16-1675

TCEQ Docket No. 2015-1783-LIC

#### APPLICATION.

Quinton Logeman, Riverside-Allendale Apartments, 2006 North Sylvia Avenue, Apartment C, Fort Worth, Texas 76111, has applied with the Texas Commission on Environmental Quality (TCEQ) for renewal of a Landscape Irrigator License. The Executive Director denied Mr.

Logeman's application for cause. Mr. Logeman has requested a formal hearing on the Executive Director's decision.

#### CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing on this application at:

10:00 a.m. - January 26, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The hearing will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Logeman should be issued a Landscape Irrigator License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. If Quinton Logeman fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director's factual allegations will be deemed admitted as true, and Mr. Logeman's application for a Landscape Irrigator License will be denied.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

#### INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: December 23, 2015

TRD-201600041

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 4, 2016



Notice of Hearing

AMDT LLC

SOAH Docket No. 582-16-1624

TCEQ Docket No. 2015-1433-MWD

Proposed Permit No. WQ0015274001

#### APPLICATION.

AMDT LLC, 1822 Plantation Drive, Richmond, Texas 77406, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015274001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day.

The facility will be located approximately 1.7 miles north of the intersection of Farm-to-Market Road 723 and Farm-to-Market Road 359, in Fort Bend County, Texas 77471. The treated effluent will be discharged to a drainage ditch/detention pond; then to a drainage ditch; then to Andrus Creek; then to Upper Oyster Creek in Segment No. 1245 of the Brazos River Basin. The unclassified receiving water uses are minimal aquatic life use for drainage ditch/detention pond, minimal aquatic life use for drainage ditch, and high aquatic life use for Andrus Creek. The designated uses for Segment No. 1245 are primary contact recreation, public water supply, and intermediate aquatic life use. Public water supply does not apply from Steep Bank Creek/Brazos River confluence to Dam #3 approximately 0.4 mile downstream from the confluence of the American Canal. A 24-hour minimum DO criterion of 1.0 mg/l applies from the confluence with Steep Bank Creek/Brazos River upstream to Dam #3.

In accordance with 30 Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures (January 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Andrus Creek, which has been identified as having a high aquatic life uses or Upper Oyster Creek, which has been identified as having intermediate aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ's Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at George Memorial Library, 1001 Golfview Drive, Richmond, Texas. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For the exact location, refer to the application.

<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.657222&lng=-95.810277&zoom=13&type=r>

#### CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - February 22, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on November 30, 2015. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

#### INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at 1 (800) 687-4040. General information about the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>.

Further information may also be obtained from AMDT LLC at the address stated above or by calling Mr. Terry Nehls, Managing Partner, at (281) 460-7374.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: January 4, 2016

TRD-201600044

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 4, 2016



#### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 16, 2016**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an

AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 16, 2016**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: A&M express group Inc. dba Texstar Food Mart; DOCKET NUMBER: 2015-0720-PST-E; TCEQ ID NUMBER: RN101835338; LOCATION: 1514 Pat Booker Road, Universal City, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Lucky Texan #1 LLC; DOCKET NUMBER: 2014-1800-PST-E; TCEQ ID NUMBER: RN105990394; LOCATION: 4243 West Pioneer Drive, Irving, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline Station; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months; THSC, §382.085(b) and 30 TAC §115.246(b)(2), by failing to maintain a copy of the Stage II records at the Station; TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i)(III), by failing to test the line leak detector at least once per year for performance and operational reliability; 30 TAC §334.45(d)(1)(E)(iv), by failing to inspect all sumps and manways in a new secondary contained UST system annually and to test all sumps or manways for tightness once every three years to assure that its sides, bottoms, and any penetration points are liquid tight; and 30 TAC §334.45(d)(1)(E)(vi), by failing to equip sumps and manways included in a new secondary contained UST system with a liquid sensing probe, which will alert the UST system owner or operator if more than two inches of liquid collects in any sump and manway; PENALTY: \$23,513; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: NEUTZE PROPERTIES, LTD. dba Mr. Cartender 2, dba Mr. Cartender 5, dba Peter Rabbits 125, and dba Peter Rabbits Fast Foods 109; DOCKET NUMBER: 2014-1621-PST-E; TCEQ ID NUMBERS: RN102457348, RN101737120, RN102356912, and RN102354289; LOCATIONS: 1989 Farm-to-Market Road 3443 (Facility 1), 2995 East Main Street (Facility 2), 2455 East Main Street (Facility 3), Eagle Pass, Maverick County, and 106 Dr. Fermin Calderon Boulevard, Del Rio, Val Verde County (Facility 4); TYPE OF FACILITIES: underground storage tank (UST) systems at four convenience stores with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) (Facilities 1, 3, and 4); TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system (Facilities 2 and 3); 30 TAC §334.72, by failing to report a suspected release to TCEQ within 24 hours of discovery (Facility 3); and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery (Facility 3); PENALTY: \$45,105; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; RE-

REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: Signal International Texas, L.P.; DOCKET NUMBER: 2015-0986-AIR-E; TCEQ ID NUMBER: RN100214303; LOCATION: 91 West Front Street, Orange, Orange County; TYPE OF FACILITY: marine and fabrication plant; RULES VIOLATED: Texas Health and Safety Code, §382.085(b), and 30 TAC §122.143(4) and §122.146(2), and Federal Operating Permit Number O2397, General Terms and Conditions and Special Terms and Conditions Number 11, by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: \$2,813; STAFF ATTORNEY: Colleen Lenahan, Litigation Division, MC 175, (512) 239-6909; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Texas Military Forces; DOCKET NUMBER: 2015-0420-MWD-E; TCEQ ID NUMBER: RN101526812; LOCATION: 6351 United States Highway 271 North, Powderly, Lamar County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013249001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, by failing to comply with permitted effluent limits; ADMINISTRATIVE COSTS: \$741.26; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201600045

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 5, 2016



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 16, 2016**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Build-

ing A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 16, 2016**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: N. H. L. GROUP, L.L.C. dba Quick Food Mart 2; DOCKET NUMBER: 2015-0378-PST-E; TCEQ ID NUMBER: RN105068381; LOCATION: 24089 Ford Road, Porter, Montgomery County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$26,356; STAFF ATTORNEY: Colleen Lenahan, Litigation Division, MC 175, (512) 239-6909; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Wanda Thompson; DOCKET NUMBER: 2015-0719-MLM-E; TCEQ ID NUMBERS: RN107573818 and RN101850204; LOCATIONS: on the south side of Main Street, 300 feet east of the intersection of Main Street and Pullen Street (Site 1); 10474 Recreational Road 255 East (Site 2), Burkeville, Newton County; TYPE OF FACILITIES: unauthorized municipal solid waste (MSW) disposal sites; RULES VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW (Sites 1 and 2); and Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the state of Texas (Site 1); PENALTY: \$4,139; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201600046

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 5, 2016



#### Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of W.T. Byler Co., Inc.

SOAH Docket No. 582-16-1562

TCEQ Docket No. 2014-1699-AIR-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 21, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 10, 2015 concern-

ing assessing administrative penalties against and requiring certain actions of W.T. Byler Co., Inc., for violations in Harris County, Texas, of: TCEQ Agreed Order Docket No. 2011-0995-AIR-E, Ordering Provision No. 2.a.i. and 2.a.ii., 30 Texas Administrative Code §§122.143(4), 122.145(2)(B), 122.146(1), and 122.146(2), Texas Health & Safety Code §382.085(b), and Federal Operating Permit O-3718/General Operating Permit No. 518, Terms and Conditions (b)(4)(C)(ii), (b)(4)(D), and (b)(13)(B)(i).

The hearing will allow W.T. Byler Co., Inc., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford W.T. Byler Co., Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of W.T. Byler Co., Inc. to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. W.T. Byler Co., Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and ch. 7, Texas Health & Safety Code ch. 382, and 30 Texas Administrative Code chs. 70 and 122; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 23, 2015

TRD-201600040

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 4, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Ona Van Dorn

SOAH Docket No. 582-16-1673

TCEQ Docket No. 2015-0429-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 21, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's First Amended Report and Petition mailed September 17, 2015 concerning assessing administrative penalties against and requiring certain actions of Ona Van Dorn, for violations in Live Oak County, Texas, of: 30 Texas Administrative Code §334.47(a)(2) and TCEQ Agreed Order Docket No. 2013-0282-PST-E, Ordering Provision Nos. 2.a. through 2.c.

The hearing will allow Ona Van Dorn, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Ona Van Dorn, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Ona Van Dorn to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's First Amended Report and Petition, attached hereto and incorporated herein for all purposes. Ona Van Dorn, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and Texas Water Code chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ryan Rutledge, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following

address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 23, 2015

TRD-201600042

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 4, 2016



### Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Jawaid W. Samana, KJ HOLDINGS, INC., and H. Erwin Wilbanks

SOAH Docket No. 582-16-1496

TCEQ Docket No. 2015-1395-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 21, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed October 20, 2015 concerning assessing administrative penalties against and requiring certain actions of Jawaid W. Samana, KJ HOLDINGS, INC., and H. Erwin Wilbanks, for violations in Harris County, Texas, of: 30 Texas Water Code §26.121, 30 Texas Administrative Code §§330.7(a), 330.15(a) and (c), 334.7(d)(3), 334.47(a)(2), and 334.54(e)(2).

The hearing will allow Jawaid W. Samana, KJ HOLDINGS, INC., and H. Erwin Wilbanks, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Jawaid W. Samana, KJ HOLDINGS, INC., and H. Erwin Wilbanks, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Jawaid W. Samana, KJ HOLDINGS, INC., and H. Erwin Wilbanks to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Jawaid W. Samana, KJ HOLDINGS, INC., and

H. Erwin Wilbanks, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26, Texas Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70, 330, and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ryan Rutledge, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 23, 2015

TRD-201600043

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 4, 2016



### Notice of Water Quality Application

The following notice was issued on December 17, 2015.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

#### INFORMATION SECTION

Cinco Southwest Municipal Utility District No 1 has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0014343001 to authorize the addition of an Interim II phase at an annual average flow not to exceed 1,900,000 gpd. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,250,000 gpd. The facility is located at 9417 1/2 South Fry Road, in Fort Bend County, Texas 77494.

TRD-201600067

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 6, 2016

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## Texas Facilities Commission

### Request for Proposals #303-7-20528

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-7-20528. TFC seeks a five (5) or ten (10) year lease of approximately 10,293 square feet of space that consists of 10,099 square feet of office space and 194 square feet of outdoor employee lounge area in Amarillo, Texas.

The deadline for questions is January 25, 2016 and the deadline for proposals is February 5, 2016 at 3:00 p.m. The award date is March 16, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=121986](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=121986).

TRD-201600082

Kay Molina

General Counsel

Texas Facilities Commission

Filed: January 6, 2016

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## General Land Office

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 2, 2015, through January 4, 2016. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, January 8, 2016. The public comment period for this project will close at 5:00 p.m. on Monday, February 8, 2016.

#### FEDERAL AGENCY ACTIONS:

**Applicant:** Kinder Morgan Terminals

**Location:** The project is located on an approximate 49-acre tract along the Tule Lake Channel within the Port of Corpus Christi Inner Harbor, at 4725 Joe Fulton International Trade Corridor, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Corpus Christi, Texas.

**LATITUDE & LONGITUDE (NAD 83):** Latitude: 27.821485 North; Longitude: 97.451281 West

#### Project Description:

The applicant proposes to construct a marine terminal and tank farm facility for the import of chemical and general grade condensate and refined petroleum. The project would consist of filling 6.30 acres of tidal wetlands, 0.35-acre of non-tidal wetlands, and 6.78 acres of other waters of the U.S. during plant construction. Fill material at the site would consist of dredge material, concrete and asphalt.

A ship docking structure consisting of a 141-foot-long by 50-foot-wide access trestle with a 60- by 80-foot terminal dock platform would be constructed. Six monopole mooring dolphins and 4 breasting dolphins would be constructed to moor ships at the facility and distributed evenly on each side of the dock platform. Dredging operations would be carried out in two phases. In the first phase, approximately 12.6 acres would be dredged along the facility shoreline using mechanical and hydraulic methods to achieve a total depth of -52 feet mean low water (-50 feet MLW and -2 feet of allowable overdredge). Approximately 610,000 cubic yards of material would be dredged during this phase. Dredged material would be used to raise the elevation of the onshore facility prior to construction, and excess material would be placed into the following dredged material placement areas (DMPAs): Suntide, DMPA No. 1, DMPA No. 4, DMPA No. 5, South Shore Cells A and B, Herbie Mauer DMPA, and Tule Lake DMPA Cells A, B, and C. Geotextile material would be placed as slope protection along the first phase dredging area and would cover approximately 2.23 acres. The second phase of dredging would be for an expansion of docking area and would cover a 7.14-acre area. The applicant has not developed an exact timeline or dredge specifications for the second phase.

**CMP Project No:** 16-1114-F1

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2015-00404. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act.

**Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).**

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Mr. Newby at the above address or by email.

TRD-201600072

Anne L. Idsal

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: January 6, 2016

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## Office of the Governor

### Request for Applications - Border Prosecution Unit

The Homeland Security Grants Division (HSGD) of the Governor's Office is soliciting applications for projects that prosecute border crimes during state fiscal year 2017.

**Purpose:** The purpose of this solicitation is to provide prosecution resources for District Attorneys along the Texas-Mexico border.

**Available Funding:** State funds for these projects are authorized under the Texas General Appropriations Act, Article I, Rider 19.

**Funding Levels:**

Minimum: \$10,000

Maximum: None

Match Requirement: None

**Standards:** Applicants must comply with standards applicable to this fund source cited in the State Uniform Grant Management Standards, and all statutes, requirements, and guidelines applicable to this funding.

**Prohibitions:** Grant funds may not be used to support the following services, activities, and costs:

- 1) inherently religious activities such as prayer, worship, religious instruction, or proselytization;
- 2) lobbying;
- 3) any portion of the salary of, or any other compensation for, an elected or appointed government official;
- 4) non-law enforcement vehicles or equipment for government agencies that are for general agency use;
- 5) weapons, ammunition, tasers, explosives or military vehicles;
- 6) admission fees or tickets to any amusement park, recreational activity or sporting event;
- 7) promotional gifts;
- 8) food, meals, beverages, or other refreshments, except for eligible per diem associated with grant-related travel or where pre-approved for working events;
- 9) any expense or service that is readily available at no cost to the grant project;
- 10) any use of grant funds to replace (supplant) funds that have been budgeted for the same purpose through non-grant sources;
- 11) membership dues for individuals;
- 12) fundraising;
- 13) construction;
- 14) medical services;
- 15) legal services for adult offenders; and
- 16) any other prohibition imposed by federal, state, or local law.

**Eligible Applicants:**

- 1) Counties within the Texas border region as defined by Texas Government Code 772.0071(a)(2) having a prosecuting attorney with membership in the Border Prosecution Unit as provided by Texas Government Code 772.053.
- 2) Counties that are significantly affected by border crime.

**Eligible Activities:**

- 1) Prosecuting criminals charged with border crimes as defined by Texas Government Code 772.0071(a)(1);
- 2) Training to members of the unit and law enforcement agencies in the border region on specific issues and techniques relating to the investigation and prosecution of border crime.

**Eligibility Requirements:**

1) Eligible applicants must be in compliance with the Texas Administrative Code (37 TAC Chapters 221-225) and all rules established by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) regarding the training of law enforcement in Texas; or, contract or reimburse for services with training providers who meet this requirement;

2) In order for an applicant to be eligible, the county (or counties) in which the applicant is located must have a 90% average on both adult and juvenile criminal history dispositions reported to the Texas Department of Public Safety for calendar years 2010 through 2014. This requirement must be met by August 1, 2016;

3) Eligible applicants operating a law enforcement agency must be current on reporting Part I violent crime data to the Texas Department of Public Safety for inclusion in the annual Uniform Crime Report (UCR) and must have been current for the three previous years (2012 through 2014);

4) Eligible applicants must have a DUNS (Data Universal Numbering System) number assigned to its agency (to request a DUNS number, go to <http://fedgov.dnb.com/webform/displayHomePage.do>);

5) Eligible applicants must be registered in the federal System for Award Management (SAM) database located at <https://www.sam.gov> and maintain an active registration throughout the grant period.

**Project Period:** Projects selected for funding with must begin on or after September 1, 2016 and expire on or before August 31, 2017.

**Application Process:** Applicants must access HSGD's grant management website at <https://eGrants.gov.texas.gov/> to register and apply for funding. Additional requirements are included within the online application form.

**Preferences:** Preference will be given to specialized prosecutors to reduce backlogs and improve workloads or to rapidly address and reduce specific violations of the law.

**Closing Date for Receipt of Applications:** All applications must be certified via HSGD's grant management website on or before April 1, 2016 by 5:00 PM CST.

**Selection Process:** Applications will be reviewed by HSGD staff members or a review group selected by the director. HSGD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

**Contact Information:** If additional information is needed, contact the eGrants help desk at [eGrants@gov.texas.gov](mailto:eGrants@gov.texas.gov) or (512) 463-1919.

TRD-201600078

Diane Morris

Assistant General Counsel

Office of the Governor

Filed: January 6, 2016



**Request for Applications - Grants for Local Border Security**

The Homeland Security Grants Division (HSGD) of the Governor's Office is soliciting grant applications for projects that support Operation Border Star during the 2017 grant cycle.

**Purpose:** The purpose of the program is to sustain interagency law enforcement operations and enhance local law enforcement patrols in an effort to deter and facilitate directed actions to interdict criminal activity. Program participants shall assist in the execution of coordinated border security operations in an effort to:

- 1) Increase the effectiveness and impact of Steady State and Surge Operations.
- 2) Reduce border-related criminal activity in Texas.
- 3) Implement and increase the effectiveness of operational methods, measures, and techniques for outbound/southbound operations.
- 4) Decrease the supply of drugs smuggled into and through Texas from Mexico.
- 5) Disrupt and deter operations of gang and cartel criminal organizations.
- 6) Decrease specifically targeted tactics (such as conveyance methods) for drugs in the Texas border region.
- 7) Decrease use of specific areas for crime as targeted in directed action missions.
- 8) Increase the effectiveness of air operations mission planning and prioritization.
- 9) Increase the coordination and integration of air-ground team operations to include Texas Military Forces (TMF) aviation, United States Customs and Border Protection (USCBP) Air and Marine, TXDPS Aircraft Division, and United States Coast Guard (USCG) aviation support.
- 10) Increase the effectiveness of directed action missions based upon intelligence and analysis to ensure they target the most serious threats and are conducted in high pay off areas.
- 11) Increase the number and quality of analytical intelligence products developed at the Unified Command and state levels.
- 12) Increase intelligence based operations at the Unified Command level through integration of TxMap, sector specific information, and intelligence analysis.

**Available Funding:** State funds for these projects are authorized under the Texas General Appropriations Act, Article I, Rider 27.

**Funding Levels:**

Minimum: None

Maximum: None

Match Requirement: None

**Standards:** Applicants must comply with standards applicable to this fund source cited in the State Uniform Grant Management Standards, and all statutes, requirements, and guidelines applicable to this funding.

**Prohibitions:** Grant funds may not be used to support the following services, activities, and costs:

- 1) inherently religious activities such as prayer, worship, religious instruction, or proselytization;
- 2) lobbying;
- 3) regular time worked as part of the employee's normal duty period;
- 4) augmentees - law enforcement personnel who are not regular employees of a funded agency, but are brought on as needed to specifically cover border security operations so that there can be a force multiplier during a period of "Surge";
- 5) any portion of the salary of, or any other compensation for, an elected or appointed government official;
- 6) time spent by certified peace officers on administrative duties;
- 7) backfill costs for personnel participating in these operations;

- 8) transportation, lodging, per diem, training fees or any related costs associated with participants who attend a training event;
- 9) purchase of vehicles;
- 10) purchase of equipment for government agencies that are for general agency use;
- 11) weapons, ammunition, tasers, explosives or military vehicles;
- 12) postage;
- 13) admission fees or tickets to any amusement park, recreational activity or sporting event;
- 14) promotional gifts;
- 15) food, meals, beverages, or other refreshments, except for eligible per diem associated with grant-related travel;
- 16) any expense or service that is readily available at no cost to the grant project;
- 17) any use of grant funds to replace (supplant) funds that have been budgeted for the same purpose through non-grant sources;
- 18) membership dues for individuals;
- 19) fundraising;
- 20) construction;
- 21) medical services;
- 22) legal fees;
- 23) legal services for adult offenders; and
- 24) any other prohibition imposed by federal, state, or local law.

**Eligible Applicants:**

- 1) Units of local government; or
- 2) Native American tribes
- 3) Eligible applicants must be located within a County within one of the six TXDPS JOIC Regions including:
  - a) El Paso JOIC - El Paso County.
  - b) Coastal Bend JOIC - Aransas County, Bee County, Calhoun County, Dewitt County, Fayette County, Goliad County, Gonzales County, Guadalupe County, Jackson County, Jim Wells County, Karnes County, Kleberg County, Lavaca County, Live Oak County, Matagorda County, McMullen County, Nueces County, Refugio County, San Patricio County, Victoria County, and Wharton County.
  - c) Marfa JOIC - Brewster County, Culberson County, Hudspeth County, Jeff Davis County, Pecos County, Presidio County, Reeves County, and Terrell County.
  - d) Del Rio JOIC - Dimmit County, Edwards County, Kinney County, Maverick County, Real County, Uvalde County, Val Verde County, and Zavala County.
  - e) Laredo JOIC - Duval County, Frio County, Jim Hogg County, La Salle County, Webb County, and Zapata County.
  - f) Rio Grande Valley JOIC - Brooks County, Cameron County, Hidalgo County, Kenedy County, Starr County, and Willacy County.

**Eligible Costs:**

- 1) Overtime for increased patrol and investigative capacity for certified peace officers along with limited support for other law enforcement support personnel (i.e., Communications Officers/Dispatchers and Jail-

ers). Project Overtime (OT) shall be reimbursed following the grantee's overtime policy and the requirements as stated below:

a) OT is time actually worked that exceeds the required number of hours during an employee's designated work period.

b) OT may be worked to increase patrol and/or in an investigative capacity.

c) The project OT rate will be no more than one-and-one-half (1.5) times the employee's regular hourly rate of pay.

d) Exempt salaried employees may not be reimbursed for overtime unless the grantee's overtime policy specifically allows for this.

e) HSGD will only reimburse the grantee for OT that does not exceed a total of 16-hours (regular +OT) worked during any 24-hour period.

2) Law enforcement support personnel costs may be reimbursed up to 5% of the award or \$5,000, whichever is less. These costs include:

a) Communications Officers/Dispatcher costs necessary to maintain a safe Officer to Dispatcher ratio when supporting law enforcement personnel that are on patrol and participating in border operations.

b) Jailer costs for personnel necessary to support officers that are on patrol and participating in border operations.

3) Certain operational costs incurred as part of these overtime patrols and investigations may be reimbursed, such as vehicle operating costs, transportation, lodging, per diem, or additional costs for minor emergency repairs as described below.

a) The cost of fuel, lubricants, and minor emergency repairs or maintenance for vehicles, aircraft, boats, generators, and similar equipment, used during the hours in which the OT is worked. Only actual expenses supported by invoiced gas, oil, and maintenance expense receipts may be reimbursed under this grant. Fuel costs used during the hours officers are working on grant-paid OT are allowable. Maintenance costs must be prorated to show the usage of vehicles or equipment for regular law enforcement duties as compared to usage while officers are working grant-paid OT patrols.

b) The cost of minor emergency repairs, such as tire repair or fan belt replacement, to vehicles or equipment used in program operations is allowable.

c) Transportation, lodging, fuel, and per diem costs may be reimbursed for personnel who work on program activities more than 50 miles from their program duty station.

d) Costs for rentals of equipment or other services critical to success of the program, and that have been pre-approved by the HSGD, are also allowable.

#### **Eligibility Requirements:**

1) Eligible applicants must agree to perform the following activities:

a) Conduct Steady State operations and respond to calls for service.

b) Conduct enhanced law enforcement patrolling activities.

c) Conduct surveillance, interdiction, investigations, and collect and disseminate information within its jurisdiction or cross-jurisdiction lines as required.

d) Recognize and react to information/intelligence to adjust times and locations of enhanced patrol activities.

e) Report significant border-related events that occur during each 24-hour period.

f) Identify significant border-related trends or areas of interest that may be developed into focus areas for future operations.

g) Integrate air, ground, marine, and remote operations.

h) Participate in operational planning and coordination meetings, information/intelligence sharing meetings, and After Action Reviews (AARs) established by the Texas Department of Public Safety's (TXDPS) Joint Operations and Intelligence Centers (JOIC).

i) Participate weekly on the JOIC Unified Command conference calls or meetings as required by the JOIC.

2) Eligible applicants must agree to submit the Daily Border Incident Assessment Report (BIAR). The BIAR is the primary incident and information-reporting tool for the grantee in local border security operations. The grantee shall ensure all BIARs conform to the respective standards outlined by the JOIC and are submitted within the timeframes established by the JOIC. The grantee shall report all activities that are considered Steady State activities in addition to Enhanced Operation activities to the JOIC. Steady State activities are defined as normal patrol or investigative duties that do not use grant funds, but directly impact the overall LBSP mission (organized crime arrests, terroristic activities, weapons trafficking arrests, kidnappings, home invasions with a border or organized crime nexus, illegal immigration, border-related murders, gang-related murders, or drug trafficking). Enhanced (Surge) Operations originate out of the use of LBSP funds when the local agency chooses to increase the hours of patrol or investigative bodies.

3) In order for an applicant to be eligible, the county (or counties) in which the applicant is located must have a 90% average on both adult and juvenile criminal history dispositions reported to the Texas Department of Public Safety for calendar years 2010 through 2014. This requirement must be met by August 1, 2016.

4) Eligible applicants operating a law enforcement agency must be current on reporting Part I violent crime data to the Texas Department of Public Safety for inclusion in the annual Uniform Crime Report (UCR) and must have been current for the three previous years (2012 through 2014).

5) Eligible applicants must have a DUNS (Data Universal Numbering System) number assigned to its agency (to request a DUNS number, go to <http://fedgov.dnb.com/webform/displayHomePage.do>).

6) Eligible applicants must be registered in the federal System for Award Management (SAM) database located at <https://www.sam.gov/> and maintain an active registration throughout the grant period.

7) Failure to comply with program eligibility requirements may cause funds to be withheld and/or suspension or termination of this Grant.

**Project Period:** Projects selected for funding with must begin on or after September 1, 2016 and expire on or before August 31, 2017.

**Application Process:** Applicants must access HSGD's grant management website at <https://eGrants.gov.texas.gov> to register and apply for funding. Additional requirements are included within the online application form.

**Closing Date for Receipt of Applications:** All applications must be certified via HSGD's grant management website on or before April 1, 2016 by 5:00 PM CST.

**Selection Process:** Applications will be reviewed by HSGD staff members in consultation with TXDPS Regional JOIC representatives. HSGD will make all final funding decisions based on eligibility and operational content which includes but is not limited to the following:

1) Compliance - Past compliance with grant requirements, reporting, and information sharing.

2) Performance - Impact and effectiveness of the Applicant's participation in previous border security operations or activities and effectiveness in using grant funds awarded for border security.

3) Risk - The Applicant's need as indicated by data available on border-related criminal activity, population, number of officers, and other factors.

4) Other Funding - The Applicant's history of applying for, receiving, and/or effectively utilizing other sources of funding available to support border security activities (e.g., Operation Stonegarden).

**Contact Information:** If additional information is needed, contact the eGrants help desk at [eGrants@gov.texas.gov](mailto:eGrants@gov.texas.gov) or (512) 463-1919.

TRD-201600077

Diane Morris

Assistant General Counsel

Office of the Governor

Filed: January 6, 2016



## Texas Health and Human Services Commission

### Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment to the Deaf Blind with Multiple Disabilities (DBMD) waiver program, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through February 28, 2018. The proposed effective date for the amendment is February 29, 2016, with no changes to cost neutrality.

This amendment request proposes to make the following changes:

1. Appendix B and Appendix J: The waiver is being amended to increase the unduplicated count of participants (Factor C) and the point-in-time (PIT). The Factor C and PIT updates will be for waiver years 3, 4, and 5.

The Deaf Blind with Multiple Disabilities program, operated by the Department of Aging and Disability Services (DADS) under the authority of HHSC, serves individuals with deafblindness or a condition that leads to deafblindness, and at least one additional disability that limits functional abilities. The program serves individuals in the community who would otherwise require care in an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID).

An individual may obtain a free copy of the proposed waiver amendment, including the DBMD settings transition plan, or may ask questions, request additional information, or submit comments regarding this amendment or the DBMD settings transition plan, by contacting Jacqueline Pernell by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711-3247, phone (512) 428-1931, fax (512) 730-7477, or by email at [TX\\_Medicaid\\_Waivers@hhsc.state.tx.us](mailto:TX_Medicaid_Waivers@hhsc.state.tx.us). The complete waiver amendment request can be found online on the DADS website at <http://www.dads.state.tx.us/providers/dbmd/>.

TRD-201506011

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 30, 2015



## Public Notice - Individuals with Intellectual and Developmental Disabilities Stakeholder Forum

On January 15, 2016, from 1:30 p.m. to 4:30 p.m. at the Alamo Area Council of Governments (AACOG) Area Agency on Aging, Al J. Notzon Board Room (Room 100), 8700 Tesoro Dr., San Antonio, Texas 78217, the Health and Human Services Commission (HHSC) is holding a public meeting. The purpose is to ask people with intellectual and developmental disabilities (IDD), their families and providers of IDD services to give input on a pilot program to use a managed care model to provide services for people with IDD.

Stakeholders can provide input through public forums, webinars, or in writing. Comments can be submitted in writing until January 22, 2016, to [IDDPilot@leavittpartners.com](mailto:IDDPilot@leavittpartners.com).

HHSC is hosting these forums in partnership with Leavitt Partners and Sellers Dorsey, two national healthcare consulting firms.

**Contact:** To ask questions about the forums or webinars or about the public comment process, contact [IDDPilot@leavittpartners.com](mailto:IDDPilot@leavittpartners.com).

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services, including translation, should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201600068

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: January 6, 2016



## Public Notice - Individuals with Intellectual and Developmental Disabilities Stakeholder Forum

On January 20, 2016, from 3 p.m. to 6 p.m. at the Larry Combest Center, 301 40th St., Lubbock, Texas 79404, the Health and Human Services Commission (HHSC) is holding a public meeting. The purpose is to ask people with intellectual and developmental disabilities (IDD), their families, and providers of IDD services to give input on a pilot program to use a managed care model to provide services for people with IDD.

Stakeholders can provide input through public forums, webinars, or in writing. Comments can be submitted in writing until January 22, 2016, to [IDDPilot@leavittpartners.com](mailto:IDDPilot@leavittpartners.com).

HHSC is hosting these forums in partnership with Leavitt Partners and Sellers Dorsey, two national healthcare consulting firms.

**Contact:** To ask questions about the forums or webinars or about the public comment process, contact [IDDPilot@leavittpartners.com](mailto:IDDPilot@leavittpartners.com).

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services, including translation, should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201600069

Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: January 6, 2016



### Public Notice - Individuals with Intellectual and Developmental Disabilities Stakeholder Webinar

On January 22, 2016, from 1 p.m. to 4 p.m. at the Lena Pope Home, 3200 Sanguinet St., Amon Carter Center, Fort Worth, Texas 76107, the Health and Human Services Commission is holding a public meeting to ask people with intellectual and developmental disabilities (IDD), their families, and providers of IDD services to give input on a pilot program to use a managed care model to provide services for people with IDD.

Stakeholders can provide input through public forums, webinars, or in writing. Comments can be submitted in writing until January 22, 2016, to [IDDPilot@leavittpartners.com](mailto:IDDPilot@leavittpartners.com).

HHSC is hosting these forums in partnership with Leavitt Partners and Sellers Dorsey, two national healthcare consulting firms.

**Contact:** To ask questions about the forums or webinars or about the public comment process, contact [IDDPilot@leavittpartners.com](mailto:IDDPilot@leavittpartners.com).

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

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TRD-201600071  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: January 6, 2016



### Public Notice: STAR Kids Client Information Session

On January 22, 2016, from 6 p.m. - 8 p.m. at The Children's Hospital of San Antonio, Christopher Goldsburly Building 5th floor Auditorium, 333 N. Santa Rosa Street, San Antonio, Texas 78207, the Texas Health and Human Services Commission (HHSC) will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

You can learn more about the STAR Kids program by visiting: <http://www.hhsc.state.tx.us/medicaid/managed-care/mmc/star-kids.shtml>.

**Contact:** Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 730-7437, [Heather.Kuhlman@hhsc.state.tx.us](mailto:Heather.Kuhlman@hhsc.state.tx.us).

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services, including translation, should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201506015  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: December 31, 2015



### Public Notice: STAR Kids Client Information Session

On January 23, 2016, from 9 a.m. - 11 a.m. at The Children's Hospital of San Antonio, Christopher Goldsburly Building 5th floor Auditorium, 333 N. Santa Rosa Street, San Antonio, Texas 78207, the Texas Health and Human Services Commission (HHSC) will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

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TRD-201506016

Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: December 31, 2015



#### Public Notice: STAR Kids Client Information Session

On February 5, 2016, from 11 a.m. to 1 p.m. at Children's Medical Center Ambulatory Care Pavilion, 2350 North Stemmons Fwy., Dallas, Texas 75207, the Texas Health and Human Services Commission (HHSC) will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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You can learn more about the STAR Kids program by visiting: <http://www.hhsc.state.tx.us/medicaid/managed-care/mmc/star-kids.shtml>.

**Contact:** Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 730-7437, [Heather.Kuhlman@hhsc.state.tx.us](mailto:Heather.Kuhlman@hhsc.state.tx.us).

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services, including translation, should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201600048  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: January 5, 2016



#### Public Notice: STAR Kids Client Information Session

On February 6, 2016, from 9 a.m. to 11 a.m. at Children's Medical Center Ambulatory Care Pavilion, 2350 North Stemmons Fwy., Dallas, Texas 75207, the Texas Health and Human Services Commission (HHSC) will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Ser-

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TRD-201600049  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: January 5, 2016



#### Public Notice: STAR Kids Client Information Session

On January 22, 2016, from 6 p.m. to 8 p.m. at The Children's Hospital of San Antonio, Christopher Goldsbury Building 5th floor Auditorium, 333 N. Santa Rosa Street, San Antonio, Texas 78207, the Texas Health and Human Services Commission will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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**Contact:** Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 730-7437, [Heather.Kuhlman@hhsc.state.tx.us](mailto:Heather.Kuhlman@hhsc.state.tx.us).

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TRD-201600051

Karen Ray  
Chief Counsel

Texas Health and Human Services Commission

Filed: January 5, 2016



#### Public Notice: STAR Kids Client Information Session

On January 23, 2016, from 9 a.m. to 11 a.m. at The Children's Hospital of San Antonio, Christopher Goldsbury Building 5th floor Auditorium, 333 N. Santa Rosa Street, San Antonio, Texas 78207, the Texas Health and Human Services Commission will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

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This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services, including translation, should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201600052

Karen Ray  
Chief Counsel

Texas Health and Human Services Commission

Filed: January 5, 2016



#### Public Notice: STAR Kids Client Information Session

On February 1, 2016, from 9 a.m. to 11 a.m. at Cook Children's Medical Center Hochberger Auditorium, 801 Seventh Ave., Fort Worth, Texas 76104, the Texas Health and Human Services Commission (HHSC) will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

You can learn more about the STAR Kids program by visiting: <http://www.hhsc.state.tx.us/medicaid/managed-care/mmc/star-kids.shtml>.

**Contact:** Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 730-7437, [Heather.Kuhlman@hhsc.state.tx.us](mailto:Heather.Kuhlman@hhsc.state.tx.us).

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TRD-201600058

Karen Ray  
Chief Counsel

Texas Health and Human Services Commission

Filed: January 5, 2016



#### Public Notice: STAR Kids Client Information Session

On February 1, 2016, from 6 p.m. to 8 p.m. at Cook Children's Medical Center Hochberger Auditorium, 801 Seventh Avenue, Fort Worth, Texas 76104, the Texas Health and Human Services Commission (HHSC) will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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TRD-201600059

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: January 5, 2016



#### Public Notice: STAR Kids Client Information Session

On February 24, 2016, from 9:00 a.m. to 11:00 a.m. at Driscoll Children's Hospital Auditorium, First Floor, 3533 South Alameda St., Corpus Christi, TX 78411, the Texas Health and Human Services Commission (HHSC) will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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TRD-201600061

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: January 5, 2016



#### Public Notice: STAR Kids Client Information Session

On February 24, 2016, from 6:00 p.m. to 8:00 p.m. at Driscoll Children's Hospital Auditorium, First Floor, 3533 South Alameda St., Corpus Christi, TX 78411, the Texas Health and Human Services Commission (HHSC) will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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TRD-201600062

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: January 5, 2016



#### Public Notice: STAR Kids Provider Information Session

On January 22, 2016, from 2 p.m. - 4 p.m. at The Children's Hospital of San Antonio, Christopher Goldsby Building 5th floor Auditorium, 333 N. Santa Rosa Street, San Antonio, Texas 78207, the Texas Health and Human Services Commission (HHSC) will hold an information session for providers related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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new managed care program. Separate sessions will be held for families and providers.

You can learn more about the STAR Kids program by visiting: <http://www.hhsc.state.tx.us/medicaid/managed-care/mmc/star-kids.shtml>.

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TRD-201506017

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 31, 2015



#### Public Notice: STAR Kids Provider Information Session

On February 5, 2016, from 2 p.m. to 4 p.m. at Children's Medical Center Ambulatory Care Pavilion, 2350 North Stemmons Fwy., Dallas, Texas 75207, the Texas Health and Human Services Commission (HHSC) will hold an information session for providers related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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TRD-201600047

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: January 5, 2016



#### Public Notice: STAR Kids Provider Information Session

On January 22, 2016, from 2 p.m. to 4 p.m. at The Children's Hospital of San Antonio, Christopher Goldsbury Building 5th floor Auditorium, 333 N. Santa Rosa Street, San Antonio, Texas 78207, the Texas Health and Human Services Commission will hold an information session for providers related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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TRD-201600053

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: January 5, 2016



#### Public Notice: STAR Kids Provider Information Session

On February 1, 2016, from 1 p.m. to 3 p.m. at Cook Children's Medical Center Hochberger Auditorium, 801 Seventh Ave., Fort Worth, Texas 76104, the Texas Health and Human Services Commission (HHSC) will hold an information session for providers related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Commu-

nity-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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TRD-201600060

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: January 5, 2016



#### Public Notice: STAR Kids Provider Information Session

On February 24, 2016, from 1 p.m. to 3 p.m. at Driscoll Children's Hospital Auditorium, First Floor, 3533 South Alameda St., Corpus Christi, Texas 78411, the Texas Health and Human Services Commission (HHSC) will hold an information session for providers related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

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TRD-201600063

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: January 5, 2016



## Department of State Health Services

### Certification Limited Liability Report

The Hospital Survey Program in the Center for Health Statistics, Texas Department of State Health Services (department), has completed its analysis of hospital data for the purpose of certifying non-profit hospitals or hospital systems for limited liability in accordance with the Health and Safety Code, §311.0456. We received requests for certification from 14 hospitals. We will notify each hospital by mail that is certified in accordance with §311.0456.

*Certified:* 1 non-profit hospital system (6 hospitals) and 7 non-profit hospitals were determined to be eligible for certification based on information that they provided i.e., charity care in an amount equal to or greater than 8 percent of their net patient revenue and that they provided 40 percent or more of the charity care in their counties. The certification issued under Health and Safety Code, §311.0456 to a non-profit hospital or hospital system takes effect on December 31, 2015, and expires on the one year anniversary of that date.

#### Seton Healthcare System - Travis County only (6 hospitals)

Dell Children's Medical Center in Travis County;

Seton Medical Center Austin in Travis County;

Seton Northwest Hospital in Travis County;

Seton Shoal Creek Hospital in Travis County;

Seton Southwest Hospital in Travis County;

University Medical Center at Brackenridge Hospital in Travis County;

#### Seton Healthcare System continued (4 hospitals)

Seton Edgar B Davis in Caldwell County;

Seton Highland Lakes in Burnet County;

Seton Medical Center Hays in Hays County;

Seton Medical Center Williamson in Williamson County;

Baylor Medical Center at Waxahachie in Ellis County;

Providence Health Center in McLennan County (include DePaul Center only);

Shannon Medical Center AKA Shannon West Texas Memorial Hospital in Tom Green County

*Not Certified:* 1 non-profit hospital was not certified because, based on their survey data, they did not provide charity care in an amount equal to or greater than 8 percent of their net patient revenue nor did they provide 40 percent of the charity care in their county.

Seton Smithville Regional Hospital in Bastrop County

For further information about this report, please contact Mr. Dwayne Collins or Ms. Andria Orbach in the Center for Health Statistics at (512) 776-7261.

TRD-201506010  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: December 30, 2015



#### Correction of Error

The Department of State Health Services adopted new 25 TAC §§416.76 - 416.93, concerning jail-based competency restoration program, in the January 8, 2016, issue of the *Texas Register* (41 TexReg 475). Section 416.84 and §416.86 were adopted with changes and republished. The following errors appeared in the rule text of §416.84 and §416.86 and should be corrected as follows.

On page 484, §416.84(3), the phrase "Clinical Management of Behavioral Health Symptoms" should be "Clinical Management for Behavioral Health Services". The corrected paragraph reads as follows:

"(3) reporting encounters with participants in the DSHS-approved clinical records management system (e.g., Clinical Management for Behavioral Health Services)."

Also on page 484, the text of §416.86(c) is incorrect. The phrase "at an average ratio over the three shifts of not lower than 1 program staff member to 3.7 participants" should be "at an average ratio of not lower than 3.7 program staff members to 1 participant". The corrected subsection reads as follows:

"(c) Program staff members, including specially trained security officers shall be assigned to participants at an average ratio of not lower than 3.7 program staff members to 1 participant."

These corrections will be incorporated into the Texas Administrative Code on-line.

TRD-201600084



#### Licensing Actions for Radioactive Materials

During the first half of December, 2015, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request, within 30 days of the date of publication of this notice, of a person affected by the Department's action. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). A person affected may request a hearing as prescribed in 25 TAC § 289.205(c) by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing – MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

**NEW LICENSES ISSUED:**

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Houston	Cardiology Consultants of Houston P.L.L.C.	L06757	Houston	00	12/09/15
San Antonio	Texas Oncology P.A.	L06759	San Antonio	00	12/14/15
Throughout TX	Roc Service Company L.L.C.	L06758	Bridgeport	00	12/11/15

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Addison	Rockwall Regional Hospital L.L.C. dba Tx. Health Presbyterian Hospital Rockwall	L06103	Addison	08	12/09/15
Arlington	USMD Hospital at Arlington	L05727	Arlington	21	12/08/15
Austin	Austin Radiological Association	L00545	Austin	183	12/09/15
Austin	ARA St. David's Imaging L.P.	L05862	Austin	62	12/14/15
Austin	Texas Oncology	L06206	Austin	15	12/04/15
Bishop	Ticona Polymers Inc.	L02441	Bishop	55	12/09/15
Childress	Childress County Hospital District dba Childress Regional Medical Center	L02784	Childress	31	12/03/15
Corpus Christi	Triad Isotopes Inc. dba Triad Isotopes-Corpus Christi	L05368	Corpus Christi	20	12/02/15
Dallas	Texas Oncology P.A.	L05534	Dallas	15	12/01/15
Dallas	Triad Isotopes Inc.	L06334	Dallas	11	12/07/15
Deer Park	The Lubrizol Corporation	L06744	Deer Park	01	12/08/15
Denton	University of North Texas	L00101	Denton	108	12/15/15
Denton	Texas Woman's University	L00304	Denton	66	12/01/15
Duncanville	Afridi Heart Care P.A.	L06005	Duncanville	12	12/15/15
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Memorial Campus	L02353	El Paso	124	12/04/15

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

El Paso	Tenet Hospitals Limited dba The Hosp. of Providence Sierra Campus	L02365	El Paso	86	12/04/15
El Paso	El Paso Healthcare System Ltd. dba Del Sol Medical Center	L02551	El Paso	69	12/01/15
El Paso	El Paso Healthcare System Ltd. dba Del Sol Medical Center	L02551	El Paso	70	12/15/15
El Paso	El Paso Healthcare System Ltd. dba Las Palmas Medical Center	L02715	El Paso	89	12/03/15
El Paso	El Paso Healthcare System Ltd. dba Las Palmas Medical Center	L02715	El Paso	90	12/15/15
Fort Worth	Cook Childrens Medical Center	L04518	Fort Worth	29	12/11/15
Fort Worth	BTDI JV L.L.P. dba Touchstone Imaging Downtown Fort Worth 8 <sup>th</sup> Ave PET/CT	L06728	Fort Worth	02	12/08/15
Freeport	BASF Corporation	L01021	Freeport	61	12/11/15
Grapevine	Baylor Regional Medical Center at Grapevine dba Baylor Scott & White Medical Center Grapevine	L03320	Grapevine	38	12/10/15
Hallettsville	Lavaca Medical Center	L04397	Hallettsville	14	12/11/15
Houston	Ben Taub General Hospital	L01303	Houston	91	12/14/15
Houston	University of Houston	L01886	Houston	74	12/08/15
Houston	Memorial Hermann Health System dba Memorial Hermann Hosp. The Woodlands	L03772	Houston	126	12/15/15
Houston	Texas Childrens Hospital	L04612	Houston	70	12/02/15
Houston	Triad Isotopes Inc.	L06327	Houston	15	12/15/15
Houston	The University of Texas M.D. Anderson Cancer Center	L06366	Houston	10	12/09/15
Jewett	Nucor Steel	L02504	Jewett	22	12/09/15
La Porte	Ineos USA L.L.C.	L00088	La Porte	62	12/11/15
Midland	West Texas Nuclear Pharmacy Partners	L04573	Midland	30	12/15/15
Midland	Texas Oncology P.A. dba Allison Cancer Center	L04905	Midland	23	12/14/15
Nacogdoches	Shared Medical Services Inc.	L06142	Nacogdoches	11	12/09/15
Orange	E. I. Du Pont De Nemours & Co.	L00005	Orange	78	12/03/15
Pasadena	Tracerco	L03096	Pasadena	90	12/04/15
Plano	Heartplace P.A.	L05699	Plano	15	12/15/15
Plano	Texas Heart Hospital of the Southwest L.L.P. dba The Heart Hospital Baylor Plano	L06004	Plano	28	12/11/15
Plano	Health Texas Provider Network dba Legacy Heart Center	L06582	Plano	05	12/03/15
Port Arthur	Motiva Enterprises L.L.C.	L05211	Port Arthur	18	12/08/15
Roanoke	Insight Health Corporation	L05504	Roanoke	18	12/09/15
San Angelo	Shannon Medical Center	L02174	San Angelo	72	12/09/15
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	162	12/02/15
San Antonio	Raba-Kistner Consultants Inc. dba Raba-Kistner-Brytest Consultants Inc.	L01571	San Antonio	80	12/15/15
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	156	12/10/15
San Antonio	Wellmed Networks Inc. dba Specialists for Health NE Cardiology	L06448	San Antonio	04	12/04/15
Stafford	Aloki Enterprise Inc.	L06257	Stafford	36	12/02/15
Sugar Land	Texas Oncology P.A. dba Texas Oncology Cancer Center Sugar Land	L05816	Sugar Land	14	12/07/15
Sugar Land	Bitswave Inc.	L06606	Sugar Land	03	12/15/15

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Sweetwater	Lone Star Industries Inc. dba Buzzi Unicem USA	L06720	Sweetwater	01	12/10/15
Three Rivers	Diamond Shamrock Refining Company L.P. dba Valero Three Rivers Refinery	L03699	Three Rivers	21	12/04/15
Three Rivers	Diamond Shamrock Refining Company L.P. dba Valero Three Rivers Refinery	L03699	Three Rivers	22	12/10/15
Throughout TX	Global X-Ray & Testing Corp.	L03663	Aransas Pass	122	12/02/15
Throughout TX	Regional Engineering Inc.	L06471	Austin	03	12/03/15
Throughout TX	KXR Inspection Inc.	L01074	Barker	114	12/10/15
Throughout TX	Pioneer Wireline Services L.L.C.	L06220	Converse	37	12/15/15
Throughout TX	Bonded Inspections Inc.	L00693	Dallas	94	12/01/15
Throughout TX	Professional Service Industries Inc.	L04940	Dallas	19	12/08/15
Throughout TX	Mistras Group Inc.	L06369	Deer Park	22	12/10/15
Throughout TX	D&S Engineering Labs L.L.C.	L06677	Denton	04	12/01/15
Throughout TX	Techcorr USA Management L.L.C.	L05972	Flint	117	12/11/15
Throughout TX	JV Industrial Companies Ltd.	L06214	Freeport	04	12/11/15
Throughout TX	Halliburton Energy Services Inc.	L02113	Houston	130	12/04/15
Throughout TX	HVJ Associates Inc.	L03813	Houston	52	12/08/15
Throughout TX	Allied Wireline Services L.L.C.	L06374	Houston	13	12/10/15
Throughout TX	Multi Phase Meters Inc.	L06458	Houston	10	12/11/15
Throughout TX	Versa Integrity Group Inc.	L06669	Houston	06	12/02/15
Throughout TX	Code Compliance Inspection L.L.C.	L06703	La Porte	03	12/08/15
Throughout TX	Braun Intertec Corporation	L06681	San Antonio	03	12/10/15
Throughout TX	Advanced Inspection Technologies L.L.C.	L06608	Spring	02	12/01/15
Throughout TX	GE Oil & Gas Logging Services Inc.	L05262	Sugar Land	54	12/11/15
Throughout TX	Dynamic Engineering Consultants L.L.C.	L06684	Sulphur Springs	01	12/10/15
Throughout TX	Diamond Shamrock Refining Company L.P.	L04398	Sunray	24	12/01/15
Throughout TX	Blazer Inspection Inc.	L04619	Texas City	66	12/10/15
Wichita Falls	Kell West Regional Hospital L.L.C.	L05943	Wichita Falls	14	12/09/15

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Gainesville	Gainesville Hospital District dba North Texas Medical Center	L02585	Gainesville	34	12/15/15
Groesbeck	South Limestone Hospital District dba Limestone Medical Center	L05932	Groesbeck	06	12/09/15
McKinney	Texas Institute of Cardiology P.A.	L05953	McKinney	04	12/11/15
Throughout TX	Baylor Medical Center at Waxahachie dba Baylor Scott & White Medical Center – Waxahachie	L04536	Waxahachie	46	12/14/15

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Austin	Minco Technology Labs L.L.C.	L06549	Austin	01	12/10/15
Bowie	Bowie Hospital Authority dba Bowie Memorial Hospital	L02327	Bowie	20	12/15/15

TERMINATIONS OF LICENSES ISSUED: (continued)

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
College Station	Cancer Physicians Associated P.A.	L05790	College Station	11	12/15/15
Longview	Chief Inspection Service L.L.C.	L06541	Longview	08	12/07/15
Midland	Ram Kolluru M.D., P.A.	L05933	Midland	04	12/04/15
Pasadena	Mohamed O. Jeroudi M.D., P.A.	L05753	Pasadena	16	12/08/15
Robstown	Pipe Reclamation Inc.	L04684	Robstown	12	12/10/15
San Antonio	Cancer Care Network of South Texas P.A. dba Cancer Care Centers of South Texas	L05717	San Antonio	24	12/14/15

EXEMPTIONS ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Lubbock	Texas Tech University	L01869	Lubbock		12/01/15

TRD-201600050  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: January 5, 2016

◆ ◆ ◆  
**Texas Department of Housing and Community Affairs**

**Notice of Public Hearing - Multifamily Housing Revenue Bonds (Cheyenne Village Apartments)**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the Forest Hills Library, 5245 Ingram Road, San Antonio, Texas 78228 at 6:00 p.m. on February 3, 2016. The hearing is regarding an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$4,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Cheyenne TAP 2016, LLC, a Texas limited liability company, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring and rehabilitating a multifamily housing development. The housing development is described as follows: an approximately 60 unit multifamily housing development located at 147 Cheyenne Avenue, San Antonio, Texas 78207 (the "Development"). Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or shannon.roth@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their

views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

<http://www.tdhca.state.tx.us/multifamily/communities.htm>

TRD-201600073  
 Tom Gouris  
 Deputy Executive Director  
 Texas Department of Housing and Community Affairs  
 Filed: January 6, 2016

◆ ◆ ◆  
**Notice of Public Hearing - Multifamily Housing Revenue Bonds (Chisolm Trace Apartments)**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the Forest Hills Library, 5245 Ingram Road, San Antonio, Texas 78228 at 6:00 p.m. on February 3, 2016. The hearing is regarding an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$9,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Chisolm TAP 2016, LLC, a Texas limited liability company, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring and rehabilitating a multifamily housing development. The housing development is described as follows: an approximately 126 unit multifamily housing development located at 10503 Huebner Road, San Antonio, Texas 78240 (the

"Development"). Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or shannon.roth@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

<http://www.tdhca.state.tx.us/multifamily/communities.htm>

TRD-201600074

Tom Gouris

Deputy Executive Director

Texas Department of Housing and Community Affairs

Filed: January 6, 2016



## Texas Department of Insurance

Company Licensing

Application for RLI INDEMNITY COMPANY to change its name to CLEAR BLUE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Chicago, Illinois.

Application for admission in the State of Texas by CLOVER INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Jersey City, New Jersey.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201600070

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: January 6, 2016



Texas Windstorm Insurance Association Dwelling and Commercial Policy Endorsements - Storm Doors

Reference Number: P-1215-05

Filing Links: S617877 and S617880

The Texas Windstorm Insurance Association has submitted new mandatory endorsements for its dwelling and commercial insurance

policies to the Texas Department of Insurance for approval under 28 TAC §5.4911.

The endorsements are Amendatory Endorsement No. TWIA 800 (for dwelling policies) and Amendatory Endorsement No. TWIA 801 (for commercial policies). The endorsements add storm doors to the list of items in the "Property Not Covered" section of the policies.

You may obtain a copy of the endorsements from the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or from <http://www.tdi.texas.gov/submissions/index.html>.

**Public Comment:** To comment on the submission, send two copies of your comments to the Texas Department of Insurance by 5:00 p.m., Central Time, on January 29, 2016. Send one copy by email to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov) or by mail to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the second copy by email to [marilyn.hamilton@tdi.texas.gov](mailto:marilyn.hamilton@tdi.texas.gov) or by mail to Marilyn Hamilton, Director, Personal and Commercial Lines Office, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

**Hearing Requests:** To request a public hearing, you must submit a written request by February 3, 2016. Send the hearing request, separately from any written comments, by email to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov) or by mail to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

TRD-201506009

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: December 30, 2015



## Texas Lottery Commission

Scratch Ticket Game Number 1794 "\$5 Set for Life"

1.0 Name and Style of Game.

A. The name of Scratch Ticket Game No. 1794 is "\$5 SET FOR LIFE". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Game No. 1794 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1794.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY BAG SYMBOL, 5X SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$1,000, \$10,000 and \$2,500 WK SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink

in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1794 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MONEY BAG SYMBOL	WIN
5X SYMBOL	WINX5
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$40.00	FORTY

\$50.00	FIFTY
\$100	ONE HUN
\$500	FIV HUN
\$1,000	ONE THOU
\$10,000	TEN THOU
\$2,500 WK SYMBOL	FOR 20 YRS

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$10,000 or top prize of \$2,500/wk (\$2,500 per week for 20 years or Cash Value Option). The Cash Value Option of the prize will be determined at the time of claim and based on the cost of purchasing the annuity.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1794), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1794-0000001-001.

K. Pack - A Pack of "\$5 SET FOR LIFE" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of Scratch Ticket 001 and back of 075 while the other fold will show the back of Scratch Ticket 001 and front of 075.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "\$5 SET FOR LIFE" Scratch Ticket Game No. 1794.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "\$5 SET FOR LIFE" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 46 (forty-six) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 46 (forty-six) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut and have exactly 46 (forty-six) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 46 (forty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 46 (forty-six) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to

the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. A Ticket can win up to twenty (20) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbol and Prize Symbols in the same spots.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have six (6) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than three (3) times.

G. The "MONEY BAG" (WIN) and "5X" (WINX5) Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "5X" (WINX5) Play Symbol will only appear as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 10 and \$10).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "\$5 SET FOR LIFE" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lot-

tery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$5 SET FOR LIFE" Scratch Ticket Game prize of \$1,000 or \$10,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$5 SET FOR LIFE" top level prize of \$2,500 per week for 20 years, the claimant must sign the winning Scratch Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. When claiming a "\$5 SET FOR LIFE" Scratch Ticket Game prize of \$2,500 per week for 20 years, the claimant must choose one of five (5) payment options for receiving his prize:

1. Cash Value Option via direct deposit transfer to the claimant/winner's account. For the top prize, a cash value option may be selected at the time of claiming the prize. The value of the prize will be determined at the time of claim and based on the cost of purchasing the annuity.

2. Weekly via direct deposit transfer to the claimant/winner's account. With this plan, a payment of \$2,500.00 less Federal withholding will be made once a week for 20 years. After the initial payment, installment payments will be made every Wednesday.

3. Monthly via direct deposit transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, an initial payment of \$10,913.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$10,833.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

4. Quarterly via direct deposit transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$32,500.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

5. Annually via direct deposit transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot pay-

ments are currently handled. With this plan, a payment of \$130,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

E. As an alternative method of claiming a "\$5 SET FOR LIFE" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000 or \$10,000, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

F. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:
  - a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
  - b. in default on a loan made under Chapter 52, Education Code; or
  - c. in default on a loan guaranteed under Chapter 57, Education Code; and
2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

G. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.E of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$5 SET FOR LIFE" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$5 SET FOR LIFE" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

### 3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 25,200,000 Scratch Tickets in the Scratch Ticket Game No. 1794. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1794 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	3,024,000	8.33
\$10	2,688,000	9.38
\$20	504,000	50.00
\$50	336,000	75.00
\$100	73,710	341.88
\$500	630	40,000.00
\$1,000	250	100,800.00
\$10,000	26	969,230.77
\$2,500/WK/20 YRS	4	6,300,000.00

\* The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.80. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1794 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1794, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201600066  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: January 6, 2016



### Public Utility Commission of Texas

#### Corrected Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 10, 2015, pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158 (West 2008 & Supp. 2015) (PURA).

Docket Style and Number: Application of Luminant Generation Company LLC, Big Brown Power Company, LLC, Oak Grove Management Company LLC, Sandow Power Company LLC, and Tradinghouse Power Company LLC Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 45429.

The Application: Luminant Generation Company LLC (Luminant Generation), Big Brown Power Company LLC, Oak Grove Management Company LLC, Sandow Power Company LLC, and Tradinghouse Power Company LLC (collectively Applicants) have filed an application for approval of a proposed acquisition by Applicants' direct parent company, Luminant Holding Company LLC, of 100 percent of the membership interests in La Frontera Holdings, LLC which indirectly owns two natural gas-fired facilities in the Electric Reliability Council of Texas (ERCOT) with a combined capacity of approximately 2,850 MW. The Applicants' ownership and control of installed generation capacity in ERCOT will be less than 20 percent.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45429.

TRD-201506007  
 Adriana Gonzales  
 Rules Coordinator  
 Public Utility Commission of Texas  
 Filed: December 29, 2015



#### Major Consulting Services Contracts

##### RFP No. 473-16-0995, Project No. 45191

Contract No. 473-14-00315 for technical consulting services in order to assist the Public Utility Commission of Texas (PUCT) in its review of the change in control filing(s) that Energy Future Holdings Corporation (EFH) may file with PUCT.

**Consultant:**

Boston Pacific Company, Inc.

1100 New York Ave, NW

Suite 490 East

Washington, DC 20005

Contract No. 473-14-00315 extended through December 31, 2016

Compensation: \$100,000.

Reports provided to PUCT on a monthly basis.

**RFP No. 473-16-0003, Project No. 45019**

*Contract No. 473-13-00105* for consulting services for evaluation, measurement and verification (EM&V) to assist the PUCT.

**Consultant:**

Tetra Tech MA, Inc.

700 N. St. Mary's Street

Suite 300

San Antonio, Texas 78205

Contract No. 473-13-00105 extended through December 31, 2016

Compensation: \$1,832,508.

Reports provided to PUCT on a monthly basis.

**RFP No. 473-16-0001, Project No. 45021**

*Contract No. 473-16-0001* between the Public Utility Commission of Texas, The Electric Reliability Council of Texas, Inc., and Potomac Economics, Inc. (Contractor) will act as the Independent Market Monitor (IMM) for the Electric Reliability Council of Texas (ERCOT) Region. Contractor will be responsible for monitoring the wholesale electricity market in the ERCOT power region, including all markets for energy, ancillary capacity services, and congestion revenue rights, and monitoring all aspects of ERCOT's operations that affect supply, demand, and the efficient functioning of the competitive wholesale electricity market.

**Consultant:**

Potomac Economics

9990 Fairfax Boulevard

Suite 560

Fairfax, Virginia 22030

Contract No. 473-16-0001 effective 01/01/2016 and shall continue in effect until 12/31/2019.

Compensation: \$14,600,000.

Reports provided to PUCT and/or ERCOT on a monthly basis.

**RFP No. 473-16-0002, Project No. 45020**

*Contract No. 473-16-0002* between the Public Utility Commission of Texas, The Electric Reliability Council of Texas, Inc., and Texas Reliability Entity, Inc. (Contractor) will act as the Reliability Monitor (RM) for the ERCOT Region and will be responsible for monitoring, investigating, auditing, and reporting to the PUCT regarding compliance with the reliability-related ERCOT Protocols, Operating Guides, and other binding documents and the reliability-related provisions of the PUCT Substantive Rules, and the reliability-related provisions of the Public Utility Regulatory Act (collectively "Reliability Legal Requirements") by ERCOT and ERCOT Market Participants (collectively "Market Entities"). Also, Contractor will provide other reliability-related subject

matter advice, expertise, and assistance to the PUCT in the conduct of the PUCT's oversight and enforcement activities.

**Consultant:**

Texas Reliability Entity, Inc.

805 Las Cimas Parkway

Suite 200

Austin, Texas 78746

Contract No. 473-16-0002 effective 01/01/2016 and shall continue in effect until 12/31/2019.

Compensation: \$4,305,256.

Quarterly Reports provided to PUCT and/or ERCOT.

TRD-201600079

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 6, 2016



**Notice of Application for a Service Provider Certificate of Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 23, 2015, for a service provider certificate of operating authority, pursuant of the Public Utility Regulatory Act. Applicant intends to provide facilities-based, data and resale telecommunications services throughout the entire State of Texas.

Docket Title and Number: Application of dishNET Wireline, L.L.C for a Service Provider Certificate of Operating Authority, Docket Number 45471.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than January 15, 2016. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45471.

TRD-201506012

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: December 30, 2015



**Notice of Application for Service Area Exception**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 30, 2015, to amend a certificated service area for a service area exception within Floyd County, Texas.

Docket Style and Number: Application of Lighthouse Electric Cooperative, Inc. and Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Service Area Exception in Floyd County. Docket Number 45487.

The Application: Lighthouse Electric Cooperative, Inc. (Lighthouse) and Southwestern Public Service Company (SPS) filed an application for a service area boundary exception to allow Lighthouse to provide

service to a specific customer located within the certificated service area of SPS. SPS has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than January 22, 2016 by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45487.

TRD-201600080  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 6, 2016



#### Notice of Application Pursuant to §56.023 of the Public Utility Regulatory Act

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on December 28, 2015, seeking a determination of need for continued support from the Texas High Cost Universal Service Plan.

Docket Style and Number: Petition of Valor Telecommunications of Texas, LLC d/b/a Windstream Communications Southwest Pursuant to Section 56.023 of the Public Utility Regulatory Act, Docket Number 45472.

The Application: Valor Telecommunications of Texas, LLC d/b/a Windstream Communications Southwest (Windstream Southwest) filed with the Public Utility Commission of Texas (Commission) a request for a determination of Windstream Southwest's financial need for continuing support from the Texas High Cost Universal Service Plan (THCUSP), and the establishment of monthly per-line THCUSP support amounts in the exchanges with a financial need for continued support. Pursuant to PURA §56.023 recipients from the THCUSP may petition the Commission to initiate a contested case proceeding to determine the company's eligibility to receive continued support under the THCUSP. Windstream Southwest asserts a financial need for continued THCUSP support exists in all of its currently supported exchanges.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 as soon as possible as a deadline to intervene will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45472.

TRD-201600035  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 4, 2016



#### Notice of Application Pursuant to §56.023 of the Public Utility Regulatory Act

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on December 28, 2015, seeking a

determination of financial need for continued support from the Texas High Cost Universal Service Plan.

Docket Style and Number: Petition of Central Telephone Company of Texas, Inc. d/b/a CenturyLink and United Telephone Company of Texas, Inc. d/b/a CenturyLink Pursuant to §56.023 of the Public Utility Regulatory Act, Docket Number 45473.

The Application: Central Telephone Company of Texas, Inc. d/b/a CenturyLink and United Telephone Company of Texas, Inc. d/b/a CenturyLink (collectively CenturyLink) filed a request for a determination of CenturyLink's financial need for continuing support from the Texas High Cost Universal Service Plan (THCUSP), and the establishment of monthly per-line THCUSP support amounts in the exchanges with a financial need for continued support. Pursuant to PURA §56.023 recipients from the THCUSP may petition the Commission to initiate a contested case proceeding to determine the company's eligibility to receive continued support under the THCUSP. CenturyLink asserts a financial need for continued THCUSP support exists in all but one of its currently supported exchanges.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 as soon as possible as a deadline to intervene will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45473.

TRD-201600036  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 4, 2016



#### Notice of Application to Amend Water and Sewer Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water and sewer certificates of convenience and necessity (CCN) in Burnet County.

Docket Style and Number: Application of City of Marble Falls to Amend its Certificates of Convenience and Necessity in Burnet County, Docket Number 45476.

The Application: The City of Marble Falls (Marble Falls) filed an application to amend its water certificate of convenience (CCN) No. 11137 and sewer CCN No. 20426 in Burnet County. Marble Falls seeks to amend its CCNs to add approximately 488 acres to its service area.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45476.

TRD-201506013  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 30, 2015

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Notice of Application to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water certificate of convenience and necessity (CCN) in Henderson and Van Zandt Counties.

Docket Style and Number: Application of Edom Water Supply Corporation to Amend its Water Certificate of Convenience Necessity in Henderson and Van Zandt Counties, Docket Number 45459.

The Application: Edom Water Supply Corporation (Edom WSC) filed an application to amend its water CCN Number 10747 in Henderson and Van Zandt Counties. Edom WSC seeks to amend its CCN to decertify approximately 252 acres of land, to add land to its service area, and also seeks dual certification with RPM WSC for another area of land.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45459.

TRD-201506006  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 29, 2015

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Notice of Filing to Withdraw Services Pursuant to 16 Texas Administrative Code §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to 16 TAC §26.208(h).

Docket Title and Number: Application of United Telephone Company of Texas d/b/a CenturyLink to Withdraw Enhance Frame Relay and ATM Service, Pursuant To 16 Tex. Admin. Code §26.208(h), Docket Number 45423.

The Application: On December 9, 2015, pursuant to 16 TAC §26.208(h), United Telephone Company of Texas d/b/a CenturyLink (CenturyLink) filed an application with the Commission to withdraw Enhance Frame Relay and ATM Service and transition affected customers to more current and capable technologies. The proceedings were docketed and suspended on December 11, 2015 to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 45423.

TRD-201600064  
Adriana Gonzales  
Rule Coordinator  
Public Utility Commission of Texas  
Filed: January 5, 2016

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Notice of Filing to Withdraw Services Pursuant to 16 Texas Administrative Code §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to 16 Texas Administrative Code §26.208(h) (TAC).

Docket Title and Number: Application of Central Telephone Company of Texas dba CenturyLink to Withdraw Enhance Frame Relay and ATM Service, Pursuant To 16 Tex. Admin. Code §26.208(h), Docket Number 45424.

The Application: On December 9, 2015, pursuant to 16 TAC §26.208(h), Central Telephone Company of Texas dba CenturyLink (CenturyLink) filed an application with the commission to withdraw Enhance Frame Relay and ATM Service and transition affected customers to more current and capable technologies. The proceedings were docketed and suspended on December 11, 2015, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 45424.

TRD-201600081  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 6, 2016

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Notice of Petition for Amendment to Water Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (Commission) on December 15, 2015, of a petition to amend a water certificate of convenience and necessity by expedited release in Kaufman County.

Docket Style and Number: Petition of II C.B., L.P. to Amend Talty Water Supply Corporation's Certificate of Convenience and Necessity by Expedited Release in Kaufman County, Docket Number 45438.

The Application: II C.B., L.P. (II C.B.) filed an application for expedited release from Talty Water Supply Corporation's water certificate of convenience and necessity (CCN) No. 10850 in Kaufman County, Texas pursuant to Texas Water Code §13.254(a-5) and 16 Tex. Admin. Code §24.113(r). II C.B. seeks to have 179.407 acres removed from water CCN. 10850.

Persons wishing to intervene or comment on the action sought should contact the commission no later than January 15, 2016, by mail at Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45438.

TRD-201600034  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 4, 2016

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## Supreme Court of Texas

In the Supreme Court of Texas

*(Editor's Note: On December 31, 2015, the Supreme Court of Texas filed Misc. Docket No. 15-9246, Order Amending the Rules and Forms for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code, in the Texas Register office. In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the notice is not included in the print version of the Texas Register. The notice is available in the on-line version of the January 15, 2016, issue of the Texas Register.)*

Misc. Docket No. 15-9246

### ORDER AMENDING THE RULES AND FORMS FOR A JUDICIAL BYPASS OF PARENTAL NOTICE AND CONSENT UNDER CHAPTER 33 OF THE FAMILY CODE

**ORDERED** that:

1. The Court approves the following amendments to the Rules and Forms for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code. This order includes a clean copy and an approximate redline copy of the amended rules and forms. The clean copy is the official version.
2. As soon as practicable, a Spanish version of the forms will be posted on [www.txcourts.gov](http://www.txcourts.gov) under the "Rules & Forms" link.
3. To effectuate the Act of June 1, 2015, 84th Leg., R.S., ch. 436 (H.B. 3994), the amendments are effective January 1, 2016. But the amendments may later be changed in response to public comments. Any person may submit written comments to Rules Attorney Martha Newton at [rulescomments@txcourts.gov](mailto:rulescomments@txcourts.gov). The Court requests that comments be sent by April 1, 2016.
4. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

Dated: December 29, 2015.

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Nathan L. Hecht, Chief Justice

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Paul W. Green, Justice

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Phil Johnson, Justice

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Don R. Willett, Justice

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Eva M. Guzman, Justice

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Debra H. Lehrmann, Justice

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Jeffrey S. Boyd, Justice

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John P. Devine, Justice

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Jeffrey V. Brown, Justice

TRD-201506018

Martha Newton

Rules Attorney

Supreme Court of Texas

Filed: December 31, 2015

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## Texas Department of Transportation

### Notice of Award

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation (department) publishes this notice of a consultant contract award for providing Independent Verification and Validation (IV&V) services to the department. Notice of the request for proposals was published in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4488).

The consultant will provide IV&V advice, assistance and support services related to the department's purchase of software, and system integrator services to design and implement a modern capital projects portfolio and project management solution at the enterprise level.

The selected consultant for these services is Gartner, Inc., 106 East Sixth Street, Suite 941, Austin, Texas 78701. The total value of the contract is \$2,921,647.00. The contract work period started on December 29, 2015 and will continue through August 31, 2017.

TRD-201600055

Joanne Wright

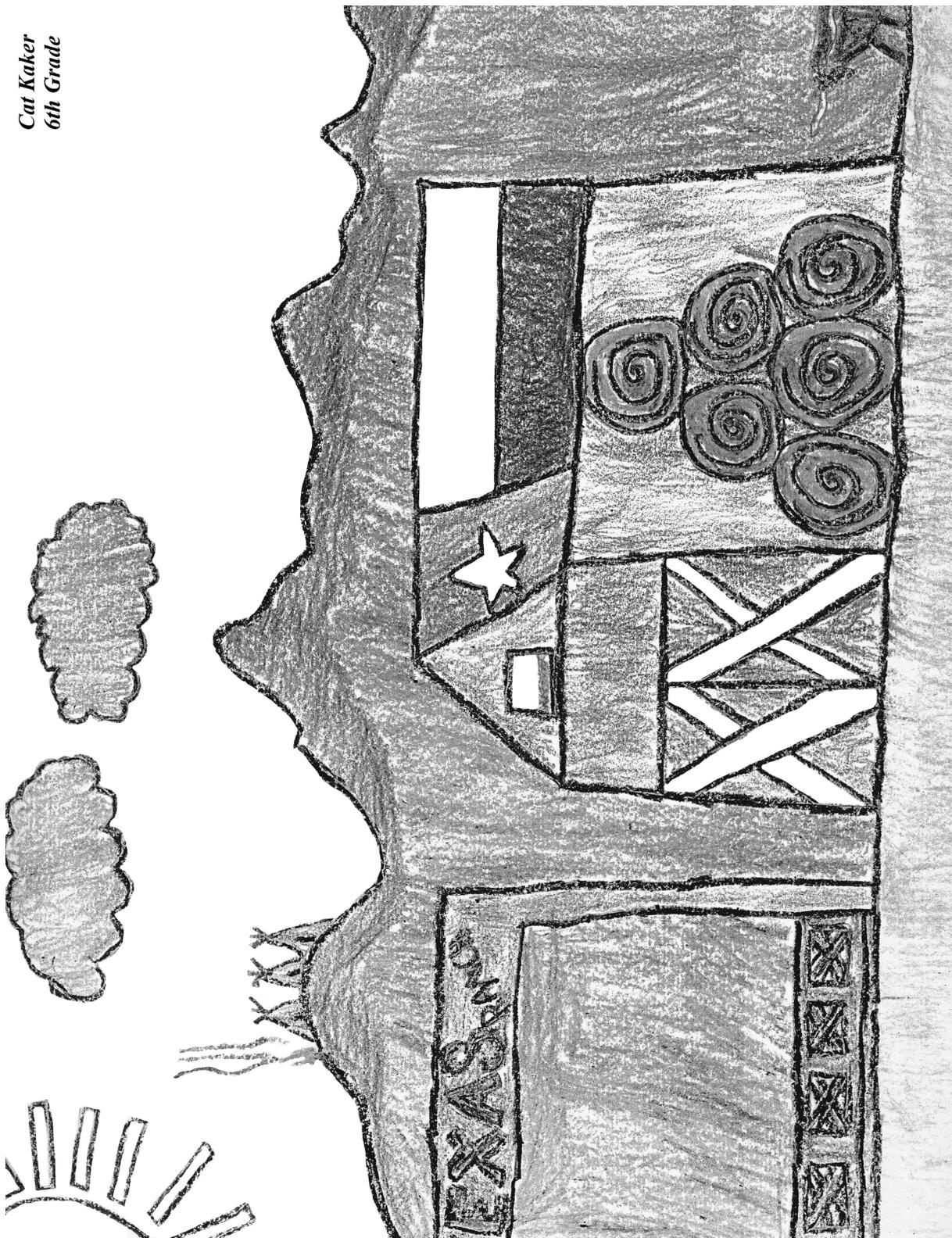
Deputy General Counsel

Texas Department of Transportation

Filed: January 5, 2016

◆   ◆   ◆

*Cat Kaker*  
*6th Grade*



## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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E-mail: [customer.support@lexisnexis.com](mailto:customer.support@lexisnexis.com)

Website: [www.lexisnexis.com/printcdsc](http://www.lexisnexis.com/printcdsc)



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