

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 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §351.4

The Texas Health and Human Services Commission (HHSC) proposes new §351.4, concerning Health and Human Services Commission Executive Council.

BACKGROUND AND JUSTIFICATION

Section 1.03 of Senate Bill 200, 84th Texas Legislature, Regular Session, establishes the Health and Human Services Commission (HHSC) Executive Council and requires the HHSC Executive Commissioner to adopt rules for the operation of the council.

SECTION-BY-SECTION SUMMARY

Proposed §351.4 describes the operations of the Executive Council, including purpose, definitions, tasks, meetings, and membership

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rule is in effect, there may be a cost to state government. Specifically there is an expected estimated cost of \$363 General Revenue (GR) \$363 All Funds for State Fiscal Year (SFY) 2017 for webcast expense. There may be additional costs for SFYs 2018 - 2021, however, the agency lacks data to predict any such additional costs at this at this time. 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 impact on small businesses or micro-businesses to comply with the proposed rule, as the requirements for compliance and the impact of the rule are both entirely internal to HHSC.

PUBLIC BENEFIT

Cecile Young, Chief Deputy Executive Commissioner, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be the establishment of a primary venue for public comment on Health and Human Services system programs and operations.

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

HHSC has determined that the proposed 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 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

HHSC 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 §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Meghan Young, HHSC Transformation, Policy, and Performance Division, by mail to 4900 North Lamar Boulevard, MC-1045, Austin, Texas 78751; by fax to (512) 487-3455; or by email to meghan.young@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing is scheduled for August 23 from 9:00 a.m. to 11:00 a.m. (central time) in the Brown-Healty Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Meghan Young at (512) 462-6238 or meghan.young@hhsc.state.tx.us.

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and §531.0051(d), which directs the Executive Commissioner of HHSC to adopt rules governing the HHSC Executive Council.

The proposed new rule implements Texas Government Code §531.0051. No other statutes, articles, or codes are affected by this proposal.

§351.4. Health and Human Services Commission Executive Council.

(a) Statutory authority. Texas Government Code §531.0051 establishes the Health and Human Services Commission Executive Council and requires the Executive Commissioner to adopt rules for its operation.

(b) Applicability of Texas Government Code Chapter 2110. The Health and Human Services Commission Executive Council is not subject to Texas Government Code Chapter 2110.

(c) Applicability of Texas Government Code Chapter 551. The Health and Human Services Commission Executive Council is not subject to Texas Government Code Chapter 551.

(d) Definitions. For the purpose of this section, the following terms are defined as follows:

(1) Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(2) Executive Council--The Health and Human Services Commission Executive Council.

(3) Health and Human Services system--All state agencies and departments under and including the Health and Human Services Commission.

(4) HHSC--The Health and Human Services Commission.

(e) Purpose. The Executive Council is established to receive public input and advise the Executive Commissioner regarding the operation of the Health and Human Services system.

(f) Tasks. The Executive Council reviews policies related to the operation of the HHS system.

(1) The Executive Council seeks and receives public comment on:

(A) proposed rules;

(B) recommendations of advisory committees established under Subchapter B of this Chapter (relating to Advisory Committees);

(C) legislative appropriations request or other documents related to the appropriations process;

(D) the operation of health and human services programs; and

(E) other items the Executive Commissioner determines appropriate.

(2) The Executive Council does not have the authority to make administrative or policy decisions.

(g) Membership. The members of the Executive Council serve at the pleasure of the Executive Commissioner.

(1) The Executive Council is composed of:

(A) the Executive Commissioner;

(B) the director of each HHSC division established under Texas Government Code §531.008(c);

(C) the commissioner of each Health and Human Services system agency; and

(D) other individuals appointed by the Executive Commissioner.

(2) When appointing members under paragraph (1)(D) of this subsection, the Executive Commissioner will make every effort to

ensure that those appointments result in Executive Council membership that includes:

(A) a balanced representation of a broad range of health and human services industry and consumer interests; and

(B) representation from broad geographic regions of the State of Texas.

(3) Members appointed under paragraph (1)(D) of this subsection are subject to the restrictions applicable to service on the Executive Council provided by Texas Government Code §531.006(a-1).

(4) Terms. Members appointed under paragraph (1)(D) of this subsection will serve two-year terms.

(A) No more than half of the terms of members appointed under paragraph (1)(D) of this subsection shall expire in a single state fiscal year.

(B) If more than half of the members appointed under paragraph (1)(D) of this subsection have terms beginning in the same state fiscal year, members will draw for one- or two-year terms. Subsequent terms will be for a period of two years.

(C) Members may serve a maximum of two consecutive terms.

(h) Presiding officer. The Executive Commissioner serves as the chair of the Executive Council.

(i) Meetings. The Executive Council meets at the call of the Executive Commissioner, at least quarterly.

(1) A meeting of the individual members of the Executive Council that occurs in the ordinary course of Health and Human Services system operations is not a meeting of the Executive Council, and the provisions of subsection (j) of this section do not apply.

(2) Live video transmissions of each meeting will be publicly available through the HHSC website.

(j) Public notice. The Executive Council will give public notice of the date, time, and place of each meeting.

(k) Quorum. A majority of the members of the Executive Council constitutes a quorum for the transaction of business.

(l) Reimbursement and compensation. Members appointed under subsection (g)(1)(D) of this section may not receive compensation but are entitled to reimbursement for travel expenses incurred while conducting the business of the Executive Council, as provided by the Texas General Appropriations Act.

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 July 18, 2016.

TRD-201603543

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 28, 2016

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



CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER D. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1624, concerning Independent Assessment of DSRIP Projects. HHSC also proposes new Division 6, concerning DSRIP Program Demonstration Year 6, and within the division, new §354.1661, concerning Definition; §354.1663, concerning Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI); §354.1665, concerning Demonstration Year 6 DSRIP Pool Funding and Distribution; §354.1667, concerning Requirements for Continuing DSRIP Projects; §354.1669, concerning Requirements for Combining Certain DSRIP Projects; §354.1671, concerning DSRIP Requirements for Uncompensated Care Hospitals; §354.1673, concerning Remaining DSRIP Funds; and §354.1675, concerning Anchor Requirements.

Background and Justification

HHSC and the Centers for Medicare & Medicaid Services (CMS) have agreed to extend the Texas Healthcare Transformation and Quality Improvement Program, a Section 1115 Waiver. The waiver authorizes Texas to operate managed care statewide, the Uncompensated Care (UC) pool, and the Delivery System Reform Incentive Payment (DSRIP). DSRIP is a program for hospitals and certain other providers to propose and implement transformative projects that increase access to care and quality of care.

To prepare for expected changes in the structure of DSRIP, HHSC proposed to CMS an initial 15-month extension. CMS approved the requested initial 15-month extension as DY6 (October 1, 2016 - December 31, 2017). DY6 is divided into DY6A and DY6B. DY6A is federal fiscal year (FFY) 2017, or the first 12 months of DY6 (October 1, 2016 to September 30, 2017). DY6B is the last three months of DY6 (October 1, 2017 to December 31, 2017). The proposed rules in new Division 6 describe the policies for DY6A.

In DY6A, HHSC proposes to simplify the structure and administration of the DSRIP program while maintaining the overall level of funding to performing providers (or "performers" as used in the DSRIP rules). To that end, HHSC proposes to focus payments more directly on the impact to patients.

HHSC is also proposing an amendment to §354.1624, to specify that compliance monitoring is an ongoing process that will continue in the transition year, and to clarify performing providers' responsibility to provide any requested documentation to the independent assessor and HHSC. The proposed amendment also clarifies that HHSC can initiate recoupments based on the findings of the independent assessor.

Section-by-Section Summary

Proposed amended §354.1624 clarifies the requirements for performing providers related to compliance monitoring and the potential HHSC actions based on that monitoring.

Proposed new §354.1661 defines terms specific to the new division.

Proposed new §354.1663 describes the proper categorization for individuals as Medicaid and Low-income or Uninsured (MLIU) for purposes of the Quantifiable Patient Impact (QPI) milestone.

Proposed new §354.1665 describes the DSRIP pool amount for Demonstration Year (DY) 6, which is the same as the DSRIP pool amount for DY 5. It also describes the distribution of funds across Categories 1-4.

Proposed new §354.1667 describes the DY6A requirements for continuing DSRIP projects for Categories 1-4. It describes the required Category 1 and 2 milestones for DY6A, which include the total QPI, MLIU QPI, core component reporting, and sustainability planning milestones. It specifies that each of these four milestones will be worth 25 percent of the DSRIP project's Category 1 or 2 value. It also describes the requirements for Categories 3 and 4 for DY6A.

Proposed new §354.1669 describes the DY6A requirements for combining certain DSRIP projects.

Proposed new §354.1671 describes the DY6A requirements for uncompensated care only hospitals.

Proposed new §354.1673 describes how the funds in the DSRIP pool not currently allocated to DSRIP projects for DY6A will be used. These uses include the option to increase value for the providers with low total value, and a one-time anchor payment to support anchor responsibilities in DY6A.

Proposed new §354.1675 describes the requirements for anchors in DY6A.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services for HHSC, has determined that for each year of the first five years the amended and proposed new rules will be in effect, there will be no impact to costs or revenues of state government.

There could be a fiscal impact on local governments. HHSC can recoup funds under these proposed rules. In that case, the DSRIP performing provider would return all Medicaid funds specified in the rule that have been received for the project. HHSC would refund federal funds to CMS, and intergovernmental transfers (IGTs) used as the non-federal portion would be returned to the transferring entity. HHSC cannot predict if any DSRIP projects would have funds recouped. Therefore, HHSC lacks sufficient data to provide an estimate of the possible local government fiscal impact.

Additionally, to fund a project requesting previously unallocated DSRIP funding, a local government would be required to provide additional IGTs to fund the non-federal share of the costs. However, since IGTs are voluntary, providing the additional funding would not be required by adoption or implementation of this rule.

Public Benefits and Costs

Gary Jessee, State Medicaid Director, has determined that, for each year of the first five years the proposed rules will be in effect, the public will benefit from adoption of the proposed rules. The anticipated public benefit will be the continued transformation of the Texas healthcare system through more efficient means.

Ms. Rymal has also determined that there are no economic costs to persons required to comply with the proposed rules.

HHSC has determined that the proposed rules will not affect a local economy or local employment.

Small Business and Micro-business Impact Analysis

HHSC has determined that the proposed rules would have no adverse economic effect on small businesses or micro-busi-

nesses. Participation in the DSRIP program and in the DSRIP transition year is voluntary and no small business or micro-business is required to be involved in the program.

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 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

HHSC 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 §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Kimberly Tucker, Health and Human Services Commission, Medicaid/CHIP Transformation Waiver Operations, Brown-Healty Building, 4900 N. Lamar Blvd., Mail Code H-425, Austin, Texas 78751; by fax to (512) 730-7479; or by e-mail to kimberly.tucker@hhsc.state.tx.us; within 30 days after publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for July 27, 2016, at 2:30 p.m. (central time) at the Brown-Healty Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Amy Chandler at (512) 487-3419.

DIVISION 3. RHP PLAN CONTENTS AND APPROVAL

1 TAC §354.1624

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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

§354.1624. Independent Assessment of DSRIP Projects.

(a) Mid-point assessment. An independent assessor will initiate a mid-point assessment of DSRIP projects prior to the fourth demonstration year, consistent with the requirements of the PFM Protocol.

(1) The independent assessor will review a DSRIP project for the following elements:

(A) Compliance with the approved RHP plan.

(B) Compliance with the required core components described in the RHP Planning Protocol, including continuous quality improvement activities.

(C) Ensuring that activities funded through DSRIP do not duplicate activities funded through other federal funds.

(D) The clarity of the improvement milestones for the fourth and fifth demonstration years and those milestones' connection to DSRIP project activities and patient impact.

(E) The benefit of the DSRIP project to the patients served by the project, including the Medicaid and uninsured populations.

(F) The opportunity for DSRIP project improvement.

(2) Any change to an RHP plan resulting from this process will be reviewed by HHSC.

(3) Based upon the recommendations of the independent assessor, HHSC or CMS may require changes to the RHP plan for the fourth and fifth demonstration years.

(b) Compliance Monitoring. ~~The [After the mid-point assessment, the]~~ independent assessor will continually monitor DSRIP projects.

(1) In addition to generally monitoring for compliance with DSRIP program requirements and objectives, the independent assessor may, at HHSC's discretion [with]:

(A) ~~[(4)]~~ review and make recommendations regarding DSRIP project values determined by HHSC or CMS to be outliers;

(B) ~~[(2)]~~ provide recommendations to HHSC regarding a request from a performer to use a Category 3 achievement target that varies from the standard target setting methodology, as described in §354.1633 of this subchapter (relating to DSRIP Requirements for Performers); and

(C) ~~[(3)]~~ provide secondary review of a request for a substantial reduction in project scope through plan modification.

(2) All RHP plans are subject to potential audits, including review by the independent assessor, during ongoing compliance monitoring. Upon request, performers must have available for review by the independent assessor, HHSC, and CMS, all supporting data and back-up documentation demonstrating performance as described under an RHP plan for DSRIP payments.

(c) Effect on DSRIP Payments. Future payments for a non-compliant DSRIP project may be withheld in whole or in part until the necessary changes identified by HHSC or CMS are addressed. In addition, the findings of the independent assessor may form the basis of a recoupment of a DSRIP payment. Failure of a performer to provide supporting documentation of metric or milestone achievement may result in recoupment of DSRIP payments.

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 July 18, 2016.

TRD-201603534

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 28, 2016

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

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DIVISION 6. DSRIP PROGRAM TRANSITION YEAR

1 TAC §§354.1661, 354.1663, 354.1665, 354.1667, 354.1669, 354.1671, 354.1673, 354.1675

Statutory Authority

The new rules are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new rules implement Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1661. Definitions.

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

(1) Alternate improvement activity--An activity that must be selected in conjunction with a Category 3 outcome designated as pay-for-reporting (P4R) or maintenance. There are two types of alternate improvement activities: stretch activities and Population-Focused Priority Measures (PFPMs).

(2) Baseline--The baseline that HHSC has on record for a Category 3 outcome, typically the baseline that the performer most recently submitted to HHSC.

(3) Baseline measurement period--The time period used to set the baseline for a Category 3 outcome.

(4) Category 3 outcome--An outcome measure for which a performer can earn Category 3 payments.

(5) Demonstration Year (DY) 6--The initial 15-month time period, as approved by CMS, for which the waiver is extended beyond the initial demonstration period, or October 1, 2016 - December 31, 2017.

(A) DY6A--Federal fiscal year (FFY) 2017, or the first 12 months of DY6 (October 1, 2016 to September 30, 2017).

(B) DY6B--The last three months of DY6 (October 1, 2017 to December 31, 2017).

(6) Extension period--The entire time period, as approved by CMS, for which the waiver is extended beyond the initial demonstration period.

(7) Federal poverty level--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.

(8) Improvement floor--A fixed value equal to ten percent of the difference between the minimum performance level (MPL) and the high performance level (HPL) for a Category 3 outcome. It is used to set the performance year (PY) goal for certain Category 3 outcomes designated as pay-for-performance (P4P) and Quality Improvement System for Managed Care (QISMC) that have a baseline that is either close to the HPL or above the HPL.

(9) Improvement over self (IOS)--A goal-setting methodology for certain Category 3 outcomes designated as pay-for-performance (P4P). Under IOS, an outcome's goal is set as closing the gap between the baseline and the perfect rate.

(10) Initial demonstration period--The first five DYs of the waiver, or December 12, 2011, through September 30, 2016.

(11) Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI)--The number of MLIU individuals served, or encounters provided to MLIU individuals, during an applicable DY that are attributable to the DSRIP project.

(12) Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI) Goal--The number of MLIU individuals that a performer intends to serve, or the number of MLIU encounters that a performer intends to provide, during an applicable DY that are attributable to the DSRIP project.

(13) Performance level--The benchmark level used to determine a Category 3 outcome's performance year (PY) goal relative to the baseline under the Quality Improvement System for Managed Care (QISMC) goal-setting methodology. There is a high performance level (HPL) and minimum performance level (MPL) for each outcome, as described in the RHP Planning Protocol.

(14) Performance Year (PY)--The 12-month measurement period that follows the baseline measurement period for a Category 3 outcome. For most outcomes, PY1 is the 12-month period that immediately follows the baseline measurement period, and PY2 is the 12-month period that immediately follows PY1.

(15) Population-Focused Priority Measure (PFPM)--A Category 3 outcome designated as pay-for-performance (P4P) that is an alternate improvement activity.

(16) Pre-DSRIP baseline--The service volume prior to the implementation of a DSRIP project, as measured by the number of individuals served or encounters provided during the 12-month period preceding the implementation of the DSRIP project. There is a pre-DSRIP baseline for total QPI and a pre-DSRIP baseline for MLIU QPI.

(17) Quality Improvement System for Managed Care (QISMC)--A goal-setting methodology for certain Category 3 outcomes designated as pay-for-performance (P4P). Under QISMC, an outcome's goal is set as closing the gap relative to the baseline and a high performance level (HPL) and minimum performance level (MPL) benchmark.

(18) Quantifiable Patient Impact (QPI) Grouping--The category of the QPI measurement. The category may be either individuals served or encounters provided.

(19) Reporting Domain (RD)--Category 4 contains five domains upon which hospital performers must report, as specified in the Program Funding and Mechanics (PFM) Protocol.

(20) Stretch activity--A pay-for-reporting (P4R) activity that is an alternate improvement activity.

(21) Total Quantifiable Patient Impact (QPI)--The total number of individuals served or encounters provided during an applicable DY that are attributable to the DSRIP project.

(22) Total Quantifiable Patient Impact (QPI) Goal--The total number of individuals that a performer intends to serve, or the total number of encounters that a performer intends to provide, during an applicable DY that are attributable to the DSRIP project.

(23) Uncompensated Care (UC) Hospital--A hospital eligible to be a performer that is not a performer, but receives UC payments.

§354.1663. Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI).

(a) To qualify as a Medicaid individual for purposes of MLIU QPI, the individual must be enrolled in Medicaid at the time of at least

one DSRIP project encounter during the applicable demonstration year (DY).

(b) To qualify as a low-income or uninsured individual for purposes of MLIU QPI, the individual must either be below 200 percent of the federal poverty level or must not have health insurance at the time of at least one DSRIP project encounter during the applicable DY.

(c) If an individual was enrolled in Medicaid at the time of one DSRIP project encounter during the applicable DY, and was low-income or uninsured at the time of a separate DSRIP project encounter during the applicable DY, that individual is classified as a Medicaid individual for purposes of MLIU QPI.

§354.1665. Demonstration Year 6 DSRIP Pool Funding and Distribution.

(a) The DSRIP pool for demonstration year (DY) 6 is \$3.875 billion.

(1) The DSRIP pool for DY6A is \$3.1 billion.

(2) The DSRIP pool for DY6B is \$775 million.

(b) A performer's total value for DY6A is equal to the performer's total value for DY5, unless otherwise specified in §354.1667 of this division (relating to Requirements for Continuing DSRIP Projects).

(c) The DSRIP funding distribution among categories for a hospital performer in DY6A is as follows:

(1) Categories 1 and 2 must comprise no more than 57 percent of the performer's total value with the following exceptions:

(A) If the performer is a hospital that does not participate in Category 4, Categories 1 and 2 must comprise no more than 67 percent of the performer's total value.

(B) If the performer met the 57 percent threshold at the time of initial RHP plan submission, but later exceeded it due to HHSC and CMS approval of a three-year project or withdrawal of Category 4 Reporting Domain 6, Categories 1 and 2 must comprise no more than 62 percent of the performer's total value.

(2) Category 3 must comprise at least 33 percent of the performer's total value.

(3) Category 4 must comprise no more than 10 percent of the performer's total value.

(d) The DSRIP funding distribution among categories for a non-hospital performer in DY6A is as follows:

(1) Categories 1 and 2 must comprise no more than 80 percent of the performer's total value.

(2) Category 3 must comprise at least 20 percent of the performer's total value.

§354.1667. Requirements for Continuing DSRIP Projects.

(a) A performer's total value for demonstration year (DY) 6A is equal to the performer's total value for DY5 with the following exceptions:

(1) HHSC notifies a performer that a DSRIP project's value may be reduced if the DSRIP project fails to complete DSRIP project or metric goals by the end of DY5.

(2) Performers with a total value less than \$250,000 for DY5 may increase their total value to up to \$250,000 per each subsequent DY beginning in DY6A. The increase in value is contingent on funds availability as described in §354.1673 of this division (relating to Remaining DSRIP Funds). Categories 1-4 will each be increased

proportionately. However, any funds in excess of the 10 percent maximum for Category 4 will be allocated to Category 3. A performer may need to increase a DSRIP project's MLIU QPI goal for DY6A and beyond in order to obtain the increased value. Performers eligible for this option must make this choice by a date to be determined by HHSC.

(b) The DY5 IGT process, payment calculations, and monitoring IGT are continued in the extension period. IGT entities from DY5 will continue to provide funding for the extension period unless a performer submits changes during the reporting period. No new certifications (RHP Plan Section VI) are required for continuing RHP participants.

(c) If a performer participated in Category 4 in DY5, the performer will continue to participate in Category 4 in DY6A. The performer's Category 4 value for DY6A will be equal to the performer's Category 4 value for DY5, unless the performer's DY5 Category 4 value is greater than 10 percent of the performer's total DY5 value. In such a situation, the performer's DY6A Category 4 value will be reduced to 10 percent of the performer's total DY5 value, and the funds above the 10 percent threshold will be allocated to Category 3 in DY6A.

(d) The following Category 1 and 2 requirements must be met in DY6A:

(1) Each DSRIP project must have the following four milestones:

(A) a total Quantifiable Patient Impact (QPI) milestone valued at 25 percent of each DSRIP project's Category 1 or 2 value;

(B) a Medicaid and Low-income or Uninsured (MLIU) QPI milestone valued at 25 percent of each DSRIP project's Category 1 or 2 value;

(C) a core component reporting milestone valued at 25 percent of each DSRIP project's Category 1 or 2 value; and

(D) a sustainability planning milestone valued at 25 percent of each DSRIP project's Category 1 or 2 value.

(2) Total Quantitative Patient Impact (QPI) Milestone.

(A) HHSC will convert each total QPI metric to a total QPI milestone with standardized language. However, if a DSRIP project has multiple QPI metrics in DY5, that project may be exempted from this conversion, based on criteria determined by HHSC and CMS.

(B) The total QPI goal is equal to the DY5 total QPI goal.

(i) Certain DSRIP projects are eligible for an adjustment to the total QPI goal. These DSRIP projects include projects for which the provider reported 66 percent achievement or less of their DY4 total QPI metric as of April DY5 reporting, and for which:

(I) the value per MLIU individual is less than or equal to \$1,000; or

(II) the value per MLIU encounter is less than or equal to \$500.

(ii) Performers of a DSRIP project described in clause (i) of this subparagraph may, by a date determined by HHSC in a form determined by HHSC, request an adjustment to the DSRIP project's total QPI goal.

(C) DSRIP projects must retain the same QPI grouping from the initial demonstration period for total QPI.

(D) DSRIP projects must retain the same pre-DSRIP baseline for total QPI from the initial demonstration period. If multiple

metrics are combined to form one total QPI milestone, the pre-DSRIP baselines will also be combined.

(E) DSRIP projects may carry forward total QPI milestones from DY6A to DY6B and DY7.

(3) MLIU QPI Milestone.

(A) Beginning in DY6A, there is an MLIU QPI milestone.

(B) For DSRIP projects that have an MLIU QPI requirement in DY5:

(i) The MLIU QPI goal is equal to the DY5 MLIU QPI goal. If, based on a determination pursuant to paragraph (2)(B) of this subsection, the total QPI goal is changed, the MLIU QPI goal will also be changed in proportion to the total QPI goal.

(ii) If the DSRIP project has an MLIU QPI metric in DY5, it retains the same pre-DSRIP baseline for MLIU QPI used in the initial demonstration period.

(iii) If the DSRIP project does not have an MLIU QPI metric in DY5, the pre-DSRIP baseline for MLIU QPI is equal to the pre-DSRIP baseline for total QPI multiplied by the earliest MLIU percentage goal on record with HHSC.

(iv) The MLIU QPI milestone must be pay-for-performance (P4P).

(C) For DSRIP projects that do not have an MLIU QPI requirement in DY5:

(i) The MLIU QPI goal is equal to the DY5 MLIU percentage goal multiplied by the DY5 total QPI goal, or as indicated in the DY5 goal language. If, based on a determination pursuant to paragraph (2)(B) of this subsection, the total QPI goal is changed, the MLIU QPI goal will also be changed in proportion to the total QPI goal.

(ii) The pre-DSRIP baseline for MLIU QPI is equal to the pre-DSRIP baseline for total QPI multiplied by the earliest MLIU percentage goal on record with HHSC.

(iii) Although all DSRIP projects must include an MLIU QPI goal, DSRIP projects under this subparagraph, with the exception of projects subject to clause (iv) of this subparagraph, must include an MLIU QPI milestone that is pay-for-reporting (P4R). This means that the performer is eligible to receive payment for the project's MLIU QPI milestone by reporting their actual MLIU QPI achievement, regardless of whether they achieved the MLIU QPI goal.

(iv) HHSC may determine that some of these DSRIP projects must include an MLIU QPI milestone that is P4P, meaning that the performer must demonstrate achievement of the project's MLIU QPI goal in order to receive payment for the MLIU QPI milestone.

(l) These DSRIP projects include the following:

(-a-) all Project Area 1.9 DSRIP projects, as described by the RHP Planning Protocol;

(-b-) DSRIP projects that did not achieve the estimated MLIU percentage in DY3, DY4, or DY5, and that caused them to have a higher than expected value per MLIU individual/ encounter;

(-c-) DSRIP projects for which HHSC notified the performer that the project was eligible to continue with changes, but the project's MLIU QPI milestone must be P4P; and

(-d-) DSRIP projects that included an MLIU goal in their QPI metric Baseline/Goal statement (an embedded goal) of their own choosing or that were required to include MLIU to receive CMS initial DSRIP project approval.

(II) A performer of a DSRIP project with an MLIU QPI milestone that is P4P under this section may request to adjust the pre-DSRIP baseline for MLIU QPI by a date determined by HHSC in a form determined by HHSC. HHSC will consider requests to adjust the pre-DSRIP baseline for MLIU QPI and may approve those requests with a strong justification.

(D) Certain DSRIP projects are eligible for an adjustment to the MLIU QPI goal. These DSRIP projects include:

(i) a DSRIP project that HHSC identifies as underperforming on MLIU QPI estimates in the initial demonstration period;

(ii) a DSRIP project that is reporting on individuals or encounters that meet the MLIU definition for the initial demonstration period, but will not meet the MLIU definition for the extension period; and

(iii) any other DSRIP project that HHSC determines has a strong justification for an adjustment.

(E) Performers of a DSRIP project described in subparagraph (D) of this paragraph may, by a date to be determined by HHSC, request an adjustment to the DSRIP project's MLIU QPI goal.

(F) DSRIP projects must retain the same total QPI grouping from the initial demonstration period for MLIU QPI.

(G) DSRIP projects may carry forward MLIU QPI milestones from the DY6A to DY6B and DY7.

(4) Non-QPI Milestones.

(A) DSRIP projects must include the following non-QPI milestones:

(i) core component reporting, which may include continuous quality improvement (CQI); and

(ii) sustainability planning, which may include activities toward furthering the exchange of health information, integration into managed care, collaboration with other community partners, or a project level-evaluation.

(B) Performers must report on their activities for these milestones in order to be eligible for milestone payment.

(C) DSRIP projects may report on DY6A non-QPI milestones only during the second reporting period of DY6A.

(D) DSRIP projects may not carry forward non-QPI milestones from DY6A to DY6B or DY7.

(e) The following Category 3 requirements must be met in DY6A:

(1) The Category 3 outcome values are equal to the Category 3 outcome values for DY5. However, if a performer's Category 4 value is greater than 10 percent of the performer's total value, the Category 4 funds in excess of the 10 percent will be redistributed to the performer's Category 3 outcomes proportionately.

(2) If a Category 3 outcome has multiple parts, the Category 3 outcome's value is equally divided among the parts.

(3) Each Category 3 outcome is designated as pay-for-performance (P4P), pay-for-reporting (P4R), or maintenance. The direction of an outcome (positive or negative) necessary to demonstrate improvement is described in the Category 3 Compendium. An outcome designated as maintenance was high performing at baseline with no reasonable room for improvement and was approved to use a milestone structure for DYs 3-5 that includes an alternate improvement activity.

(4) If a Category 3 outcome is designated as pay-for-performance (P4P) in DY5, 100 percent of the Category 3 outcome's value is P4P.

(5) If a Category 3 outcome is designated as pay-for-reporting (P4R) or maintenance with a population focused priority measure (PFPM) in DY5, 100 percent of the Category 3 outcome's value is P4P of the PFPM.

(6) If a Category 3 outcome is designated as P4R with an associated stretch activity in DY5, the performer must choose one of the following options by a date determined by HHSC in a form determined by HHSC:

(A) Maintain the Category 3 outcome designated as P4R from DY5 and select a new stretch activity that does not duplicate the DY5 stretch activity.

(i) The performer must select a new stretch activity from the following:

(I) program evaluation (alternate approaches to program and outcome linkages);

(II) new participation in health information exchange (HIE) or improvement of existing HIE infrastructure; or

(III) cost analysis and value-based purchasing planning.

(ii) Under this option, 50 percent of the Category 3 outcome's value is P4R of the Category 3 outcome and 50 percent is for completion of the stretch activity.

(B) Select a PFPM. Under this option, 100 percent of the Category 3 outcome's value is P4P of the selected PFPM.

(7) If a Category 3 outcome is designated as maintenance with an associated stretch activity in DY5, 100 percent of the Category 3 outcome's value is for statistically significant maintenance of the baseline.

(8) If a Category 3 outcome is designated as P4P in DY5, performance year (PY) 3 is the 12-month period immediately following the PY2 approved for use in DYs 3-5, or a performer may request, by a date to be determined by HHSC, to use DY6A as PY3. PY4 is the 12-month period immediately following PY3.

(9) If a Category 3 outcome is designated as P4R in DY5, PY3 is the 12-month period immediately following the PY2 approved for use in DYs 3-5.

(10) If a Category 3 outcome is designated as P4P in DY5, the outcome's goal is set as an improvement over the baseline from DYs 3-5 to be achieved in PY3, or PY4 if not fully achieved in PY3.

(A) One of the following methodologies is used to set the outcome's goal, as described in the RHP Planning Protocol:

(i) Quality Improvement System for Managed Care (QISMC);

(ii) Improvement over self (IOS); or

(iii) IOS - Survey.

(B) If an outcome is designated as QISMC in DY5, the outcome's PY3 goal is calculated as follows, using the baseline, minimum performance level (MPL), and high performance level (HPL) that were used for goal setting in DYs 3-5:

Figure: 1 TAC §354.1667(e)(10)(B)

(C) If an outcome is designated as IOS in DY5, the outcome's PY3 goal is a 12.5 percent gap closure towards perfect over the baseline.

(D) If an outcome is a P4P survey-based outcome in outcome domain 10 or 11 as defined in the RHP Planning Protocol, and is designated as IOS-survey in DY5, HHSC will develop an alternate goal-setting methodology for the PY3 goal.

(E) If an outcome has an HHSC approved alternate achievement request in DY5, the performer must submit to HHSC, by a date determined by HHSC in a form determined by HHSC, a request to use a PY3 goal that is a continuation of the goals approved in DYs 4-5. Such requests will be approved by HHSC on a case-by-case basis.

(F) If an outcome is designated as QISMC in DY5, with a baseline that is below the MPL, and the performer is measuring a population substantially dissimilar from the population used to establish the MPL benchmark, the performer may submit, by a date determined by HHSC in a form determined by HHSC, an alternate achievement request to set the PY3 goal as a 12.5 percent gap closure towards perfect over the baseline.

(11) Partial payment for a Category 3 P4P outcome is available in quartiles as defined in the RHP Planning Protocol, measured between the outcome's PY1 goal and PY3 goal.

(A) Each Category 3 P4P outcome has an associated achievement milestone that is assigned an achievement value based on the performer's achievement of the outcome's goal as follows:

(i) if 100 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 1.0;

(ii) if at least 75 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 0.75;

(iii) if at least 50 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 0.5;

(iv) if at least 25 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 0.25; or

(v) if less than 25 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 0.

(B) The percent of the goal achieved is determined as follows:

Figure: 1 TAC §354.1667(e)(11)(B)

(i) If an outcome is approved to use a baseline established in DY4, partial payment will be measured over a PY1 equivalent goal. The PY1 equivalent goal will follow the QISMC or IOS goal calculations for PY1 as approved in the RHP Planning Protocol.

(ii) If a QISMC outcome has a PY3 goal that was determined using the improvement floor, partial payment will be measured over the PY1 equivalent goal. If a higher rate indicates improvement for the outcome, the PY1 equivalent goal is the baseline plus 40 percent of the improvement floor. If a lower rate indicates improvement for the outcome, the PY1 equivalent goal is the baseline minus 40 percent of the improvement floor.

(12) Performers may carry forward Category 3 milestones from DY6A to DY6B and DY7.

(f) The following Category 4 requirements must be met in DY6A:

(1) Requirements for Category 4 are the same as the requirements for Category 4 Reporting Domains (RDs) 1-5 in DY5.

(2) If a performer's Category 4 value is greater than 10 percent of the performer's total value, the funds in excess of the 10 percent will be redistributed to Category 3.

(3) The optional RD6 will be removed as it was required to value Category 4 at the 15 percent maximum in DYs 3-5.

§354.1669. Requirements for Combining Certain DSRIP Projects.

(a) Certain DSRIP projects may be eligible to combine based on performer requests to combine. These DSRIP projects must:

- (1) be eligible to continue into the extension period;
- (2) not exceed a DY6A value of \$5 million when combined; and
- (3) be one of the following:

(A) cross-regional community mental health center DSRIP projects;

(B) similar DSRIP projects by the same performer; or

(C) similar DSRIP projects by different performers within the same health system.

(b) HHSC will combine these DSRIP projects' total QPI metrics, MLIU QPI metrics, and MLIU QPI goals, as well as their pre-DSRIP baselines, into:

- (1) one total QPI milestone and goal;
- (2) one MLIU QPI milestone and goal; and
- (3) one pre-DSRIP baseline for each.

§354.1671. DSRIP Requirements for Uncompensated Care Hospitals.

An Uncompensated Care hospital must participate in an annual learning collaborative and report on mandatory Category 4 domains as described in §354.1633(e)(1) of this subchapter (relating to DSRIP Requirements for Performers).

§354.1673. Remaining DSRIP Funds.

The funds in the DSRIP pool not allocated to DSRIP projects for DY6A will be reallocated.

(1) Funds are reallocated to increase the performer's total value to up to \$250,000 per each subsequent demonstration year (DY) beginning in DY6A. Such an increase is only available to performers who have DSRIP projects totaling less than \$250,000.

(2) The anchor of an RHP is allocated the greater of RHP allocation as defined in 354.1634(b) of this subchapter (relating to Waiver Pool Allocation) multiplied by \$20 million or the following minimum allocations.

(A) A Tier 1 RHP anchor has no minimum DY6A allocation.

(B) A Tier 2 RHP anchor has no minimum DY6A allocation.

(C) A Tier 3 RHP anchor has a minimum DY6A allocation of \$1,250,000.

(D) A Tier 4 RHP anchor has a minimum DY6A allocation of \$625,000. A Tier 4 RHP's minimum DY6A allocation may be increased to \$800,000 if the anchor meets the requirements described in §354.1675(1) of this division (relating to Anchor Requirements).

(3) The DY6A anchor allocation is in lieu of the anchor administrative payment.

§354.1675. Anchor Requirements.

To receive its DY6A anchor payment, an anchor must comply with the requirements in this section.

(1) An anchor must submit a DY6A learning collaborative plan in accordance with the PFM Protocol, if it is the anchor of a Tier 1, 2, or 3 region or it is the anchor of a Tier 4 region that wishes to receive the enhanced allocation.

(A) The DY6A learning collaborative plan, at a minimum, must include an annual regional learning collaborative. The learning collaborative must include a focus on DSRIP integration into Medicaid managed care, value-based purchasing, alternative payment models, or sustainability strategies for low-income uninsured. The anchor could also meet this requirement through a workgroup that would be in addition to the annual regional learning collaborative.

(B) Two or more regions may work together to submit a cross-regional DY6A learning collaborative plan.

(2) An anchor must conduct an extension stakeholder engagement forum to promote collaboration in the next phase of the waiver and community goals. The feedback from this forum should be used to inform the learning collaborative plan for DY6B and beyond. The anchor must post a copy of the updated RHP plan on the RHP's website prior to the extension stakeholder engagement forum.

(3) An anchor must submit the following information in accordance with the PFM Protocol:

(A) the region's community needs assessment that was submitted with the original RHP plan in 2012 that has been updated as appropriate to reflect major changes, including changes to the priority needs;

(B) a description of the process used to update the region's community needs assessment, including the process used to obtain stakeholder feedback; and

(C) the RHP plan that was submitted in 2012 that has been updated for DY6B onward. This updated RHP plan will include next steps for DSRIP projects as agreed upon by HHSC and CMS that would occur beginning in DY6B.

(4) An anchor must submit documentation in accordance with the PFM Protocol that demonstrates that the anchor implemented the DY6A learning collaborative plan and conducted an extension stakeholder engagement forum.

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 July 18, 2016.

TRD-201603535

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 28, 2016

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

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES
SUBCHAPTER H. STRUCTURAL PEST
CONTROL SERVICE
DIVISION 1. GENERAL PROVISIONS
4 TAC §7.115

The Texas Department of Agriculture (the Department) proposes new Texas Administrative Code (TAC), Title 4, Part 1, Chapter 7, Subchapter H, Division 1, §7.115, Structural Pest Control Enforcement, relating to penalties for violations of Subchapter H. The penalties set forth in the attachment to §7.115, the Penalty Matrix (Matrix), are created to deter conduct detrimental to public health and safety, the environment, and consumer confidence and to prevent unfair competition by noncompliant businesses. The proposed rule promotes transparency in the Department's regulatory efforts to protect Texas consumers, and provides notice to regulated persons and businesses subject in accordance with Chapter 1951 of the Texas Occupations Code (Code).

Chapter 1951 of the Code authorizes the Department to regulate certain structural pest control activities in this state. The Department's regulatory goals are to provide consumers and businesses with a fair and efficient trade environment, to encourage business development, to inspire consumer confidence, and to protect human health and safety, the environment, and the real and personal property of consumers. To achieve these goals, the Department has rulemaking authority under Chapter 12 of the Texas Agriculture Code to prescribe and assess administrative penalties to enforce structural pest control laws and regulations through routine and risk-based inspection programs, complaint investigations, and other regulatory activities involving pest control in and around structures such as homes, commercial buildings, apartments, schools, and workplaces.

As part of its ongoing commitment to consumer protection, the Department has proposed §7.115 to encourage consistent, uniform, and fair assessment of penalties by the Department for violations of Chapter 7 of TAC, Title 4. Prior to proposal of this rule, the Department sought and received input from the Structural Pest Control Advisory Committee, which includes members of the structural pest control industry. Those suggestions and input have been taken under consideration in the development of the Matrix.

Under §12.020(d) of the Agriculture Code, all penalties assessed by the Department shall be individualized to the specific nature, circumstances, extent, and gravity (NCEG) the hazard or potential hazard (HPH) of the violation, as well as other factors related to the violation or violator, when appropriate.

The Department may settle violations, as deemed appropriate, through various means including, but not limited to, negotiation or deferment of penalties, probation, required continuing education, license limitations, or other appropriate lawful means, subject to approval of the Commissioner, on a case-by-case basis. All decisions made by the Department related to violations of Subchapter H are based on current circumstances, including extant information, laws.

The proposed attachment and §7.115 may be reviewed and revised from time to time. This Matrix shall be effective immediately upon adoption and shall supersede the current "Structural Pest Control Service Penalty Guidelines and Penalty Matrix" which was previously published by the Department in the June 14, 2013, issue of the *Texas Register* (TRD-201302239).

Leslie Smith, Director for Consumer Service Protection, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of the proposal.

Ms. Smith has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the increased deterrence of violations of Chapter 7, related to structural pesticide controls by licensed and unlicensed individuals. Currently the penalty Matrix is in effect and provides for economic penalties for those individuals who are subject to and violate Chapter 7, Subchapter H of TAC, Title 4. Therefore, the only economic impact on micro-businesses, small businesses or individuals subject to Chapter 7, Subchapter H, will be possible increased penalties related to those new categories within the Matrix.

Written comments on the proposal may be submitted for 30 days following publication of this proposal to Leslie Smith, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email at Leslie.Smith@TexasAgriculture.gov.

The new rule is proposed under Chapter 12 of the Texas Agriculture Code, which authorizes the Department to prescribe and assess administrative penalties to enforce structural pest control laws and regulations, and Chapter 1951 of the Occupations Code, which authorizes the Department to regulate certain structural pest control activities in this state.

The proposal is made under Chapter 12 of the Texas Agriculture Code and Chapter 1951 of the Occupations Code.

§7.115. Structural Pest Control Enforcement.

The Department has established the following schedule of disciplinary sanctions for violations of Subchapter H, related to Structural Pest Control Service.

Figure: 4 TAC §7.115

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 July 18, 2016.

TRD-201603544

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

**SUBCHAPTER EE. COMMISSIONER'S RULES
CONCERNING PILOT PROGRAMS**

19 TAC §102.1058

The Texas Education Agency (TEA) proposes new §102.1058, concerning the reading excellence team pilot program. The proposed new section would implement the requirements of the Texas Education Code (TEC), §28.0061, as added by Senate Bill (SB) 935, 84th Texas Legislature, Regular Session, 2015.

SB 935, 84th Texas Legislature, Regular Session, 2015, added the TEC, §28.0061, to require the commissioner of education to establish and administer a reading excellence team pilot program. The pilot program establishes reading excellence teams composed of reading instruction specialists who would provide assistance to eligible school districts upon request. A school district is eligible to participate in the reading excellence team pilot program if the district has low student performance, as determined by the commissioner, on required reading diagnosis assessments for kindergarten, Grade 1, and Grade 2 or on the Grade 3 State of Texas Assessments of Academic Readiness (STAAR®) reading assessment.

Proposed new 19 TAC §102.1058, Reading Excellence Team Pilot Program, would implement the TEC, §28.0061, by establishing qualifications and criteria for selecting reading instruction specialists for reading excellence teams. It would also require that reading instruction specialists have significant expertise in reading instruction; experience in providing instruction related to the curriculum in 19 TAC Chapter 110, Texas Essential Knowledge and Skills for English Language Arts and Reading; and knowledge of developmentally appropriate and research-based strategies for students. The proposed new section would require selected education service centers to prioritize school districts and open-enrollment charter schools that apply based on low performance on statutorily defined kindergarten-Grade 3 assessments for receipt of reading excellence teams.

Participants in the pilot program will be required to report pre- and post-assessment results to the TEA in the time and manner described in the request for participation.

School districts participating in the pilot program will be required to collect data and maintain paperwork as necessary to provide the TEA with reports on implementation of the pilot program.

FISCAL NOTE. Martin Winchester, deputy commissioner for educator support, has determined that for the first five-year period the new section is in effect, there will be no fiscal implications for state or local government, including local school districts and open-enrollment charter schools, as a result of enforcing or administering the new section. There is no effect on local economy for the first five years that the proposed new rule is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Winchester 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 to provide schools with additional training and support to improve instruction and raise student achievement in reading instruction in kindergarten-Grade 3. 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 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 July 29, 2016, and ends August 29, 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. Comments may also be submitted electronically to rules@tea.texas.gov. 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 July 29, 2016.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §28.0061, as added by Senate Bill 935, 84th Texas Legislature, Regular Session, 2015, which requires the commissioner of education to adopt rules to administer the reading excellence team pilot program, including establishing qualifications and criteria for selecting reading instruction specialists for a reading excellence team; and the TEC, §12.104(d), which authorizes the commissioner to permit open-enrollment charter schools access to state programs available to school districts if the open-enrollment charter schools comply with the requirements of the programs.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §28.0061, as added by Senate Bill 935, 84th Texas Legislature, Regular Session, 2015, and §12.104(d).

§102.1058. Reading Excellence Team Pilot Program.

(a) Eligibility for participation. The commissioner of education shall determine a school district's or open-enrollment charter school's eligibility to participate in the Reading Excellence Team Pilot Program based on the following:

(1) a school district's or open-enrollment charter school's performance on a reading instrument administered in accordance with the Texas Education Code (TEC), §28.006(c); or

(2) a school district's performance on a Grade 3 reading assessment instrument administered under the TEC, §39.023(a), relative to other districts in the district's region.

(b) Selection of districts.

(1) Education service centers (ESCs) selected to administer the pilot program by the commissioner shall establish an application deadline for school districts and open-enrollment charter schools to request assignment of a reading excellence team.

(2) The ESCs shall prioritize the assignment of reading excellence teams to the lowest performing school districts and open-enrollment charter schools that apply for assistance, as measured by the reading instruments referenced in subsection (a)(1) and (2) of this section.

(3) After assignment of reading excellence teams under the initial application, if any capacity to assign reading excellence teams remains, the ESCs may accept additional applications and provide reading excellence team support to additional school district and open-enrollment charter school applicants based on the lowest performing school districts or open-enrollment charter schools, as measured by the reading instruments referenced in subsection (a)(1) and (2) of this section.

(c) Qualifications for reading instruction specialist. A reading instruction specialist must have:

(1) significant expertise in reading instruction with a minimum of three years of classroom teaching experience;

(2) experience in providing instruction directly related to the curriculum in Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading), specifically in kindergarten-Grade 3; and

(3) knowledge of developmentally appropriate and research-based strategies for students in kindergarten-Grade 3.

(d) Assignment of reading excellence teams. ESCs shall assign reading excellence teams upon prioritization of the applications and in accordance with this section and the TEC, §28.0061.

(e) Requests for student achievement data. Participating school districts and open-enrollment charter schools will comply with requests for student achievement data made by reading excellence teams or their sponsoring ESC that will assist in monitoring the implementation as well as the effectiveness of the overall pilot program. The sponsoring ESC shall adopt procedures to ensure compliance with applicable state and federal privacy laws. The sponsoring ESC shall comply with requests for student achievement data made by the Texas Education Agency.

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 July 18, 2016.

TRD-201603540

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: August 28, 2016

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



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.91

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.91, concerning Reportable Events.

Background, Justification and Summary

The amendment to §501.91 adds the requirement of a licensee to notify the Board of any voluntary consent decree of the right to practice before any governmental body or agency, state foreign country or other jurisdiction and the notification would be required of any limitation on a professional license issued in any state or federal regulatory agency including Texas.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a better understanding of when licensees are required to report an event that limits their right to practice.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on August 29, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.91. Reportable Events.

(a) A licensee or certificate holder shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee or certificate holder has knowledge of these events:

(1) the conviction or imposition of deferred adjudication of the licensee or certificate holder of any of the following:

(A) a felony;

(B) a crime of moral turpitude;

(C) any crime of which fraud or dishonesty is an element or that involves alcohol abuse or controlled substances; and

(D) any crime related to the qualifications, functions, or duties of a public accountant or CPA, or to acts or activities in the course and scope of the practice of public accountancy or as a fiduciary;

{(2) the cancellation, revocation, or suspension of a certificate, other authority to practice, or refusal to renew a certificate or other authority to practice as a CPA or a public accountant, by any state, foreign country or other jurisdiction;}

(2) [(3)] the cancellation, revocation, or suspension or a voluntary consent decree of the right to practice as a CPA or a public accountant before any governmental body or agency or state, foreign country, or other jurisdiction [other licensing agency];

(3) [(4)] an un-appealable [unappealable] adverse finding in any state or federal court or an agreed settlement in a civil action against the licensee or certificate holder concerning professional accounting services or professional accounting work or a finding of a breach of fiduciary duty, fraud or misappropriation; or

(4) [(5)] the revocation, suspension, voluntary consent decree or any limitation on [loss of] a professional license from any [another] state or federal regulatory agency such as an insurance license or a securities license, resulting from an un-appealable [unappealable] adverse finding.

(b) The report required by subsection (a) of this section shall be signed by the licensee or certificate holder and shall set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event.

(c) Nothing in this section imposes a duty upon any licensee or certificate holder to report to the board the occurrence of any of the events set forth in subsection (a) of this section either by or against any other licensee or certificate holder.

(d) As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence may not be actually imposed until all appeals are exhausted.

(e) Interpretive Comment: A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community and further defined in §501.90(18) and §519.7 of this title (relating to Discreditable Acts and Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board).

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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TRD-201603531

Jerry Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: August 28, 2016

For further information, please call: (512) 305-7842



CHAPTER 505. THE BOARD

22 TAC §505.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.10, concerning Board Committees.

Background, Justification and Summary

The amendment to §501.10 streamlines the rule to make it easier to read and understand.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on August 29, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§505.10. Board Committees.

(a) Committee appointments. Appointments to standing committees and ad hoc committees shall be considered annually by the board's presiding officer to assist in carrying out the functions of the board under the provisions of the Act. Committee appointments shall

be made by the presiding officer for a term of two years but may be terminated at any point by the presiding officer. Committee members may be re-appointed at the discretion of the presiding officer. The board's presiding officer shall be an ex officio member of each standing committee and ad hoc committee and chair of the executive committee.

(b) Committee actions. The actions of the committees are recommendations only and are not binding until ratification by the board at a regularly scheduled meeting.

(c) Committee meetings. Committee meetings shall be held at the call of the committee chair, and a report to the board at its next regularly scheduled meeting shall be made by such chair or, in the absence of the chair, by another board member serving on the committee.

(d) Vacancies. If for any reason a vacancy occurs on a committee, the board's presiding officer may appoint a replacement in accordance with subsection (a) of this section.

(e) Standing committee structure and charge to committees. The standing committees shall consist of policy-making committees and working committees comprised of the following individuals and shall be charged with the following responsibilities.

(1) The executive committee shall be a policy-making committee comprised of the board's presiding officer, assistant presiding officer, secretary, treasurer, immediate past presiding officer of the board if still serving on the board, and at least one other officer elected by the board. The executive committee shall also be the board's audit committee. The executive committee may act on behalf of the full board in matters of urgency, or when a meeting of the full board is not feasible; the executive committee's actions are subject to full board ratification at its next regularly scheduled meeting. The functions of the executive committee shall be to advise, consult with, and make recommendations to the board concerning matters requested by the board's presiding officer, including:

(A) the board's budget and finances;

(B) litigation;

(C) emergency suspensions pursuant to §519.11 of this title (relating to Emergency Suspension);

(D) emergency rulemaking pursuant to §2001.034 of the Administrative Procedure Act;

(E) amendments to the Act;

(F) responses/positions relating to papers, reports, and other submissions from national or international associations or boards;

(G) legislative oversight, including, but not limited to, budget, performance measures, proposed changes in legislation affecting the board, and computer utilization; and

(H) special issues.

(2) The CPE committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the mandatory CPE program in accordance with Chapter 523 of this title (relating to Continuing Professional Education) [as it relates to reporting and attendance requirements, registration and monitoring of CPE sponsors, disciplinary actions, reporting forms; and office procedures];

(B) investigations of sponsor compliance with the terms of the sponsor agreements, including the related recordkeeping requirements;

(C) the results of monitoring CPE courses for the purpose of evaluating the facilities, course content as presented, and the adequacy of the course presenter(s);

(D) any significant deficiencies observed in carrying out subparagraphs (B) and (C) of this paragraph; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the mandatory CPE program as it relates to licensees and to relations with sponsors of CPE.

(3) The qualifications committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the educational qualifications of an applicant for the UCPAE in accordance with Chapter 511, Subchapter C of this title (relating to Educational Requirements) and courses that may be used to meet the education requirements to take the examination;

(B) the administration, security, discipline, and other aspects of the conduct of the UCPAE in Texas;

(C) the work experience qualifications of an applicant for the CPA certificate in accordance with §§511.121 - 511.124 of this title (relating to Experience Requirements); and

(D) recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the qualifications process.

(4) The licensing committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) applications for certification, registration, and licensure;

(B) where applicable, the equivalency examination measuring the professional competency of an applicant for a CPA certificate by reciprocity; and

(C) recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies as they relate to the licensing process.

(5) The behavioral enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) review requests or applications for reinstatement of any certificate, registration, or license which the committee recommended and the board revoked, suspended, or refused to renew;

(B) investigate complaints involving alleged violations of the Act and the board's rules, primarily concerning behavioral issues, and based upon its findings, make recommendations to the board or authorize the staff to offer an agreed consent order, or in the alternative, to litigate the findings of Act or rule violations;

(C) follow up on board orders to insure that licensees and certificate holders and others adhere to sanctions prescribed by or agreements with the board; and

(D) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the behavioral restraints of the rules and the Act.

(6) The technical standards review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least three non-board members who shall serve in an advisory capacity. The committee shall:

(A) review requests or applications for reinstatement of any certificate, registration, or license which the committee recommended and the board revoked, suspended, or refused to renew;

(B) investigate complaints from any source involving alleged violations of the Act and the board's rules, primarily concerning technical issues and based upon its findings, make recommendations to the board or authorize the staff to offer an agreed consent order, or in the alternative, to litigate the findings of Act or rule violations;

(C) follow up on board orders to insure that licensees or certificate holders and others adhere to sanctions prescribed by or agreements with the board; and

(D) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to enforcement of technical standards.

(7) The peer review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) conduct a periodic review of firms in accordance with Chapter 527 of this title (relating to Peer Review) [and evaluation of reports publicly filed with the State of Texas (or any board, commission, or agency thereof) and of each of the various types of reports, as defined by board rule, of each practice unit, as defined by board rule, which is engaged in the practice of public accountancy in the State of Texas];

(B) refer to the technical standards review committee firms with deficient reviews [egregious substandard reports issued by practice units] for which educational rehabilitation has not been effective; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the peer review program.

(8) The board rules committee shall be a policy-making committee comprised of at least three board members, one of whom shall serve as chair. The committee shall make recommendations to the board concerning the board's rules, opinions and policies. All working committees shall refer proposed changes to the board's rules, opinions and policies to the rules committee for consideration for recommendation to the board.

(9) The peer assistance oversight committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall oversee the peer assistance program administered by the TSCPA as required under the Texas Health and Safety Code, §467.001(1)(B), and insure

that the minimum criteria as set out by the Department of State Health Services are met. It shall make recommendations to the board and the TSCPA regarding modifications to the program and, if warranted, refer cases to other board committees for consideration of disciplinary or remedial action by the board. The committee shall report to the board on a semi-annual basis, by case number, on the status of the program.

(10) The constructive enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by non-board CPA members. At least one Committee member shall be a public member of the board. The committee shall approve the constructive enforcement program, coordinate its activities with board committees and staff, and supervise the training of constructive enforcement advisory committee members. A staff attorney of the board shall supervise the day to day administration of the constructive enforcement program and activities of the committee's non-board members on behalf of the committee chairman. The committee shall:

(A) investigate matters forwarded to the committee from any other board committee or board staff in accordance with board instruction and policy;

(B) prepare, as appropriate, investigative reports regarding each referred matter;

(C) inform referring board committees or board staff of the results of its investigations;

(D) inform the appropriate committee when possible violations of board rules and the Act are observed; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the constructive enforcement program.

(11) The Fifth-Year Accounting Students Scholarship Program advisory committee was created in §901.657 of the Act (relating to Advisory Committee) and consists of eight members appointed by the board for the purpose of advising the board on how scholarships under the Fifth-Year Accounting Students Scholarship Program should be established and administered; the amount of money needed to adequately fund the scholarships and the maximum amount that may be awarded in any given year to an individual student; and any priorities among the factors of financial need, ethnic or racial minority status, and scholastic ability and performance.

(f) Ad hoc advisory committees. Ad hoc advisory committees may be established by the board's presiding officer and members and advisory members appointed as appropriate.

(g) Policy guidelines. All advisory committee members performing any duties utilizing board facilities and/or who have access to board records, shall conform and adhere to the standards, board rules, and personnel policies of the board as described in its personnel manual and to the laws of the State of Texas governing state employees.

(h) Conflicts of interest. To avoid a conflict of interest or the appearance of a conflict of interest, no committee member may provide a report or expert testimony for or otherwise advocate on behalf of a complainant or a respondent in a disciplinary matter pending before the board while serving on a standing committee of the board.

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 July 15, 2016.



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 85. HEALTH AUTHORITIES

SUBCHAPTER A. LOCAL PUBLIC HEALTH

25 TAC §85.1

The Executive Commissioner of Health and Human Services, on behalf of the Department of State Health Services (department), proposes an amendment to §85.1, concerning health authorities.

BACKGROUND AND PURPOSE

The Local Public Health Reorganization Act, Health and Safety Code, Chapter 121, governs health authorities. A health authority performs duties necessary to implement and enforce laws to protect the public health and as prescribed by the department. The purpose of the amendments is to replace references to the Board of Health with references to the department and to clarify the rule by correcting references to subsections in a previous rule revision.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 85.1 has been reviewed, and the department has determined that reasons for adopting the section continues to exist because a rule on this subject is needed to administer health authorities effectively.

SECTION-BY-SECTION SUMMARY

The amendments to §85.1 are nonsubstantive changes needed to clarify the rule. The amendments to §85.1(b)(2) and (f) replace references to the "Board of Health" with the "department." The proposed change in reference to the department is in compliance with Senate Bill 219, 84th Legislature, 2015, which revised Health and Safety Code, Chapter 121.

The amendment to §85.1(c) deletes an unnecessary reference to subsection (d) from a previous rule revision. The amendment to §85.1(i) replaces a reference to subsection (i) with a reference to subsection (h) to clarify that when a new health authority has been appointed, the person must take the official oath and file a copy of the oath and appointment with the appropriate regional office as required by subsection (h).

FISCAL NOTE

Ms. Beverly Pritchett, Director for the Office of Public Health, has determined that for each year the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Pritchett has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with this rule. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Pritchett has also determined that for each year of the first five years the rule is in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the rule will be a decreased risk of illness through effective statewide local monitoring and reporting of reportable conditions and enforcement of public health law.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by 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 department has determined that the 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 Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Dan Smith, Office of Public Health, Division for Regional and Local Health Services, Department of State Health Services, Mail Code 1908, P.O. Box 149347, Austin, Texas 78714-9347 or by email to dan.smith@dshs.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §121.024, which requires local health authorities to perform each duty that is necessary to implement and enforce a law to protect the public health or as prescribed by the department; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the

Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The amendment implements Health and Safety Code, Chapters 121 and 1001; and Government Code, Chapters 531 and 2001.

§85.1. *Health Authorities.*

(a) A health authority is a physician appointed under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121, by the governing body of a city, county, or public health district to administer the state and local laws relating to public health.

(b) A health authority must be appointed in a municipality or county that has established a local health department or public health district.

(1) (No change.)

(2) If a non-physician serves as the director of a local health department or public health district, the director shall appoint a physician to serve as the health authority within the jurisdiction of such local health department or district subject to the approval of the governing body of the local health department or public health district. No action is required by the department [~~Board of Health (board)~~] to further approve the appointment.

(c) A health authority may be appointed, but is not required to be appointed, in a municipality or county that has not established a local health department or public health district [~~unless it falls under subsection (d) of this section~~]. The governing body of the municipality or the commissioners court of the county may appoint the health authority within its jurisdiction.

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

(f) A regional director of the department may perform some or all of the duties of a health authority if an appointed health authority fails to perform duties prescribed by the board in this section. At the request of the appointing authority, a regional director may serve as a health authority because of the absence or incapacity of the appointed health authority. No action by the department [~~board~~] is necessary to further approve a regional director's performance or service.

(g) - (h) (No change.)

(i) If a health authority ceases to hold office for any reason, the appointing authority shall immediately notify the department and appropriate regional director. When a new health authority has been appointed, the person will take the action outlined in subsection (h) [(i)] of this section and notify the appropriate regional office of the 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.

Filed with the Office of the Secretary of State on July 15, 2016.

TRD-201603532

Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6972

