

# 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 10. DEPARTMENT OF INFORMATION RESOURCES

#### CHAPTER 210. STATE ELECTRONIC INTERNET PORTAL

The Texas Department of Information Resources (the Department) proposes amendments to 1 TAC Chapter 210, §§210.1, 210.30 - 210.32, 210.34 - 210.36, and 210.54, concerning the State Electronic Internet Portal, to clarify the processes and policies of current practices and correct typographical errors. The department published a formal notice of rule review in the June 19, 2015, issue of the *Texas Register* (40 TexReg 4011). Review of the sections implements Government Code, §2001.039.

In 1 TAC §210.1, the Department proposes amendments to correct a typographical error by capitalizing all words in the defined term "State Electronic Internet Portal".

In 1 TAC §201.30, the Department proposes amendments to the title as it is redundant to the title of the Chapter. The Department proposes amendments to correct a typographical error by capitalizing all words in the defined term "State Electronic Internet Portal".

In 1 TAC §210.30(b), The Department proposes amendments to change the requirement to collect five (5) dollars annually per license issued to a passive requirement. Some state agencies are collecting the fee and others are not. This amendment empowers state agencies to determine the need to collect a fee.

In 1 TAC §210.31(a), the Department proposes amendments to clarify that the information shall be found on the State Electronic Internet Portal.

In 1 TAC §210.31(b), the Department proposes amendments to clarify that the information shall be found on the State Electronic Internet Portal. Additionally, the Department separated 1 TAC §210.21(b)(3) into two separate items to make it easier to read. The Department removes the requirement that the State Electronic Internet Portal establish a funding opportunity number system for all programs that post a synopsis to the Electronic Grant System.

In 1 TAC §210.32, the Department proposes amendments to clarify that the referenced information shall be found on the State Electronic Internet Portal.

In 1 TAC §§210.34 - 210.36, and 210.54, the Department proposes amendments to correct a typographical error by capitalizing all words in the defined term "State Electronic Internet Portal".

The changes to the chapter apply to state agencies and institutions of higher education. The assessment of the impact of the adopted changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with §2054.121(c), Texas Government Code.

Jennifer Buaas, Director of Digital Government, has determined that during the first five-year period following the amendments to 1 TAC Chapter 210 there will be no fiscal impact on state agencies, institutions of higher education and local governments.

Ms. Buaas has further determined that for each year of the first five years following the adoption of the amendments to 1 TAC Chapter 210 there are no anticipated additional economic costs to persons or small businesses required to comply with the amended rule.

Written comments on the proposed amendments may be submitted to Martin Zelinsky, General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to martin.zelinsky@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register*.

#### SUBCHAPTER A. DEFINITIONS

##### 1 TAC §210.1

The amendments are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities, and §2054.111(d) and §2054.262, Texas Government Code, regarding rules for state agency websites and the State Electronic Internet Portal.

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

*§210.1. Applicable Terms and Technologies for the State Electronic Internet Portal.*

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

(1) License holder--Individuals for whom and entities for which a profile system is required to be or may be established by state agency licensing entities.

(2) Licensing entity--A department, commission, board, office or other agency of the state or a political subdivision of the state that issues an occupational license.

(3) Occupational license--A license, certificate, registration, permit, or other form of authorization, including a renewal of the authorization, that a person must obtain to practice or engage in a particular business, occupation, or profession; or a facility must obtain before a particular business, occupation, or profession is practiced or engaged in within the facility.

(4) Profile system--An electronic system established by a licensing entity that is required by §2054.2606(a), Texas Government

Code, or opts pursuant to §2054.2602, Texas Government Code, to establish an electronic system containing at least the licensee information prescribed by §2054.2606(c), Texas Government Code.

(5) Profiling licensing entities--The state agencies listed in §2054.2606(a) and licensing entities that opt to provide a profile system pursuant to §2054.2606(b).

(6) State Electronic [electronic] Internet Portal [portal]-- Means the electronic government project implemented under Subchapter I, Chapter 2054, Texas Government Code.

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 October 31, 2016.

TRD-201605658

Martin Zelinsky

General Counsel

Department of Information Resources

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For further information, please call: (512) 463-1634



## SUBCHAPTER B. STATE AGENCY USE OF THE STATE ELECTRONIC INTERNET PORTAL

### 1 TAC §§210.30 - 201.32, 210.34 - 210.36

The amendments are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities, and §2054.111(d) and §2054.262, Texas Government Code, regarding rules for state agency websites and the State Electronic Internet Portal.

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

§210.30. [*State Electronic Internet Portal*] License Holder Profile Fees.

(a) Each licensing entity identified in §2054.2606(a), Government Code that is required to establish a license holder profile system may collect a fee approved by the department from license holders listed in §2054.2606(a), Government Code that are applying for an initial license or are renewing an existing license. The fee may be collected through increasing the license issuance and renewal fees, by the licensing entity covering the fee from other revenues rather than increasing license issuance and renewal fees, or by a combination of increasing license issuance and renewal fees by less than the specified fee per license holder and covering a portion of the fee per license holder from other revenues of the licensing entity. Any fees to cover the costs of providing the license holder profile system shall be processed by the licensing entity pursuant to guidelines established by the department and the Office of the Comptroller of Public Accounts.

(b) Each state agency licensing entity that opts to establish a license holder profile system pursuant to §2054.2606(b), Government Code, may [shall] collect five dollars annually per license issuance or renewal fee payable by each license holder about whom or which information is available through the profile system. The five dollar fee may be collected through increasing the license issuance and renewal fees by five dollars per license holder, by the licensing entity covering the fee from other revenues rather than by increasing license issuance and renewal fees, or by a combination of increasing license issuance and renewal fees by less than five dollars per license holder and covering

a portion of the five dollars per license holder from other revenues of the licensing entity.

§210.31. *Electronic Grant System Applicability, Purpose and Agency Responsibilities.*

(a) Unless granted an exemption by the department based on the requirements in §210.33 of this chapter, each state agency, other than institutions of higher education and those state agencies defined in §531.001(4), Government Code, shall develop and electronically announce synopses of all funding opportunities under financial assistance programs that award discretionary grants, loans, and cooperative agreements using a standard format and a set of common data elements established statewide and posted on the State Electronic Internet Portal [department's website]. The standard format and common data elements shall provide potential applicants with:

(1) Enough information about the funding opportunity to decide whether they are interested in viewing the full announcement;

(2) One or more ways to get the full announcement with the detailed information; and

(3) The capability to search for state grant opportunities by using one or more of the following: key word(s), date, funding opportunity number, specific agency or name of agency.

(b) The state agency head or his or her designated representative(s) shall:

(1) Issue any needed direction to offices that award discretionary grants and cooperative agreements on the requirement to post a synopsis on the department's website, including the standard data elements and format;

(2) Require that synopses follow the format to ensure all required data elements are included;

(3) Ensure the synopsis posted on the State Electronic Internet Portal [department's website] will have full instructions regarding where to obtain the full announcement for the funding opportunity; and[-]

(4) Announce the funding opportunity in the *Texas Register* if necessary to further satisfy statutory, regulatory, or the agency's policy requirements. [-; and]

[(4) Establish a funding opportunity number system for all programs that post a synopsis to the Electronic Grant System.]

§210.32. *Electronic Grant System Data Elements and Format.*

Unless granted an exemption by the department, state agencies, other than institutions of higher education and those state agencies defined in §531.001(4), Government Code, shall follow the standards and use the data elements and funding opportunity announcement format approved by the department and posted on the State Electronic Internet Portal [department's website]. State agencies shall continue to post their full announcement at location(s) consistent with applicable statutory requirements and policies. The synopsis shall be posted with universal resource locator (URL) links through which the full announcement can be obtained.

§210.34. *Payment Security Compliance.*

State agencies and local governments that contract to use the State Electronic Internet Portal [state electronic internet portal] for financial transactions must comply with payment security requirements such as the Payment Card Industry Data Security Standard (PCI DSS) identified or referenced in the policies and procedures manual for the State Electronic Internet Portal [state electronic internet portal].

§210.35. *State Agency Infrastructure.*

A state agency may not duplicate an infrastructure component that is listed in the State Electronic Internet Portal [state electronic internet portal] policies and procedures manual, unless the department approves the duplication of an infrastructure component.

§210.36. *State Electronic Internet Portal Policies and Procedures Manual.*

A policies and procedures manual will be developed and maintained for the State Electronic Internet Portal [state electronic internet portal]. This manual will be approved by the department and posted on the department's website.

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 October 31, 2016.

TRD-201605659

Martin Zelinsky

General Counsel

Department of Information Resources

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For further information, please call: (512) 463-1634



## SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION USE OF THE STATE ELECTRONIC INTERNET PORTAL

### 1 TAC §210.54

The amendments are proposed under 054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities, and §2054.111(d) and §2054.262, Texas Government Code, regarding rules for state agency websites and the State Electronic Internet Portal.

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

§210.54. *Institutions of Higher Education Payment Security Compliance.*

Institutions of higher education that contract to use the State Electronic Internet Portal [state electronic internet portal] for financial transactions must comply with payment security requirements such as the Payment Card Industry Data Security Standard (PCI DSS) identified or referenced in the policies and procedures manual for the State Electronic Internet Portal [state electronic internet portal].

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

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## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

#### SUBCHAPTER K. MAINTENANCE PROGRAM

#### 4 TAC §3.702

The Texas Department of Agriculture (the Department), upon the request and recommendation of the Texas Boll Weevil Eradication Foundation, proposes amendments to Title 4, Part 1, Subchapter K, §3.702, concerning the West Texas Maintenance Area. The amendments are non-substantive to correct typographical errors in the rule text.

Stuart Strnad, Coordinator for Agriculture Commodity Boards and Producer Relations, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state government. There will be no fiscal impact for local governments as a result of administering or enforcing the rule amendment, as proposed.

Mr. Strnad has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated will be clarification of the rule and the assurance that the steering committees for each zone will be able to provide input regarding the West Texas maintenance area. There shall be no additional fees to micro-businesses, small businesses or individuals to comply with the proposed amendments.

Comments on the proposal may be submitted in writing to Stuart Strnad, Coordinator for Agriculture Commodity Boards and Producer Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to [Stuart.Strnad@TexasAgriculture.gov](mailto:Stuart.Strnad@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

The amendments are proposed in accordance with the Texas Agriculture Code (the Code), §74.203, which provides the Department with the authority to adopt rules to impose a maintenance fee on all cotton grown or on all cotton acres in a maintenance area.

The code that is affected by the proposal is Texas Agriculture Code, Chapter 74.

§3.702. *West Texas Maintenance Area.*

(a) The West Texas Maintenance Area shall consist of the following eleven (11) existing contiguous eradication zones: El Paso/Trans Pecos, Northern Rolling Plains, Northwest Plains, Panhandle, Permian Basin, Rolling Plains Central, Southern High Plains/Caprock, Southern Rolling Plains, Northern High Plains, St. Lawrence, and Western High Plains.[.]

(b) In each of the eleven (11) existing contiguous eradication zones listed in subsection (a) of this section, the commissioner has determined that:

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

(3) the cotton grower steering committee for each zone was consulted by the Foundation regarding the inclusion of the zone in the West Texas maintenance area; and

(4) (No change.)

(c) (No change.)

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

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## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code, §70.100 and §70.101, and proposes the repeal of current §70.100 and §70.101, regarding the Industrialized Housing and Buildings program.

Texas Occupations Code §1202.152 requires the Industrialized Building Code Council (Council) to adopt later editions of the codes adopted by the statute if the Council determines that the use of these later code editions is in the public interest and consistent with the purposes of Texas Occupations Code, Chapter 1202. The proposed repeal and proposed new rules are necessary to adopt recent editions of the mandatory building codes in the Industrialized Housing and Buildings program and to make necessary amendments to the respective Codes.

The following codes as amended serve as the standards for design, manufacture and installation of Industrialized Housing and Buildings: the 2015 editions of the International Building Code, International Residential Code, International Fuel Gas Code, International Mechanical Code, International Plumbing Code, International Energy Conservation Code, and International Existing Building Code, and the 2014 edition of the National Electrical Code.

The Department's Industrialized Housing and Building Code Council met on August 22, 2016, to consider a draft of these rules. The Council recommended proposing the rules in the *Texas Register* for public comment, and anticipate that the rules will become effective on August 1, 2017.

The proposed new §70.100 sets forth that, effective August 1, 2017, all industrialized housing and buildings, modules, and modular components shall be constructed in accordance with codes referenced in each respective subsection (c) through (j). The proposed repeal of current §70.100 is replaced with the new §70.100.

The proposed new subsections under §70.101(c) through (j), Amendments to Mandatory Building Codes, specify in detail the proposed amendments to the international and national codes as adopted in §70.100. The proposed repeal of current §70.101 is replaced with the new §70.101.

The proposed new §70.101(a) requires the council to consider and review approved and recommended ICC amendments to the code, to determine the interest to the public, and that said amendments shall be effective 180 days following the date of the Council's determination or at a later date as set by the Council.

The proposed new §70.101(b) specifies that any amendment proposed by a local building official and determined by the Council to be essential to the health and safety of the public following a public hearing, shall become effective 180 days following the date of the Council's determination or at a later date as set by the Council.

The proposed new §70.101(c) provides amendments to several sections within the 2015 International Building Code, which updates the standards for design and construction of industrialized housing and buildings in Texas.

The proposed new §70.101(d) provides the amendments to several sections within the 2015 International Residential Code, which update the standards for one- and two-family industrialized housing in Texas.

The proposed new §70.101(e) provides the amendments to several sections within the 2015 International Fuel Gas Code, which update the fuel gas standards for industrialized housing and buildings in Texas.

The proposed new §70.101(f) provides the amendments to several sections within the 2015 International Mechanical Code, which update the mechanical standards for industrialized housing and buildings in Texas.

The proposed new §70.101(g) provides the amendments to several sections within the 2015 International Plumbing Code, which update the plumbing standards for industrialized housing and buildings in Texas.

The proposed new §70.101(h) provides the amendments to several sections within the 2015 International Energy Conservation Code, which update the energy conservation standards for industrialized housing and buildings in Texas.

The proposed new §70.101(i) provides the amendments to several sections within the 2015 International Existing Building Code, which update the standards for existing industrialized housing and buildings in Texas.

The proposed new §70.101(j) provides an amendment to the 2014 National Electrical Code, which updates the electrical standards for industrialized housing and buildings in Texas.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rules are in effect there will be no direct cost or cost savings to state or local government as a result of enforcing and administering the proposed rules. No estimated increase or loss in revenue to the state is expected because no changes in state regulatory processes or procedures are anticipated in order to implement the adoption of the changes to the codes. No increase in fees collected by the Department will be needed. Local governments are adopting the code changes and the adoption by the state regulatory program will not result in additional costs or cost savings to local governments.

Mr. Francis has determined that for the first five-year period the proposed rules are in effect no impact to local economies or local employment is expected.

Mr. Francis also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will include added protection for public health and safety due to manufacturers' and installers' compliance with more current national code standards applicable to buildings. The adoption of the rules will reduce confusion by bringing the state standards into alignment with the standards being adopted by local governments.

The proposed rules will result in the construction of safer and more energy efficient buildings, reducing energy costs to consumers and decreasing emissions from power plants. In addition, the adoption of new code editions often triggers the adoption of new technology that, under older code editions, was not allowed by the building codes and required "listings" for the products to be approved for use. Listed products are those that have been evaluated by an accredited product certification agency. These agencies perform periodic inspections to ensure that the products continue to meet the standards under which they were tested and found suitable for a specified purpose. The public will benefit from the reduced restrictions that result from the removal of the listing burden for products used in construction.

Mr. Francis has determined that for each year of the first five-year period the proposed rules are in effect there will be economic costs to persons required to comply with the proposal. The energy code requirements found in the International Energy Conservation Code (IECC) present the most probable potential for adverse economic impact to manufacturers and industrialized builders. Some of these entities may be small or micro-businesses. Other entities licensed under the program rules are unlikely to be adversely impacted by the proposal.

The Department currently licenses approximately 340 industrialized builders and 116 manufacturers. The Department does not maintain financial statements on these entities; however, licensing records indicate that approximately 19 of the industrialized builders and two of the manufacturers are either sole proprietors or partnerships, which could indicate that these are small or micro-businesses.

The adoption of the 2015 International Energy Conservation Code will result in many changes to the building envelope requirements, requirements for sealing and insulation of ducts, requirements for hot water piping insulation, and 75% of lamps are now required to be high-efficiency lamps. The code also requires a blower door test, and the allowable leakage has decreased from 7 ACH (air changes per hour) in climate zone 2 to 5 ACH and from 7 ACH in climate zones 3 and 4 to 3 ACH. Most of these changes happened between the 2009 and the 2012 editions of the code, and the majority of the 2012 changes have been carried over into the 2015 code now being adopted. Studies located on the U.S. Department of Energy (DOE) website show that the changes between the 2012 and the 2015 codes are small compared to those between the 2009 and the 2012 codes.

As part of the rulemaking process the Department reviewed a cost effectiveness analysis for the U.S. Department of Energy conducted by Pacific Northwest National Laboratory (PNNL). The analysis compares the 2009 and the 2012 IECC for new single and multifamily homes (the changes between the 2012 and the 2015 IECC are negligible, so the comparison between

the 2009 and 2012 IECC is still relevant). The results of this study for Texas show that the increase in construction costs attributable to the code changes, on average for a 2,400 square foot house in Texas, would be approximately \$1,800, and approximately \$900 for a 1,200 square foot apartment or condo. This is the total combined cost for manufacturers and industrialized builders and includes the changes discussed in the preceding paragraph. The average life-cycle cost savings for a Texas homeowner would be \$3,456. The study estimated that the average time to reach positive savings, including up-front cost impacts, would be approximately two years. Therefore, although the Department expects that manufacturers and builders will incur additional initial costs to comply with the amended standards, those costs will typically be passed along to consumers who in turn ultimately benefit over time from reduced energy costs resulting from the improvements in building structure and components required by the amended codes.

The energy compliance of all new construction in Texas is required under the authority of the State Energy Conservation Office (SECO), as authorized by Chapter 447, Texas Government Code. The SECO rules in 34 Texas Administrative Code, Part 1, ch.19, contain energy standards for all buildings built in Texas. The Department's rule proposal adopts the current energy standards mandated by SECO. Because industrialized buildings must be compliant with these standards it cannot be said that the Department's rule proposal is the only reason that some business entities will be economically impacted.

Alternatives to the rule proposal could be that small and micro-businesses would not be required to comply with the amended mandatory building codes, or that the Department could provide for a longer period to phase them in. However, the Department does not find these alternatives to be consistent with the purpose of the program law, Occupations Code Chapter 1202, and Department rules. The law requires the Department to adopt the amended codes if doing so is in the public interest and is consistent with the purpose of regulating manufacturers and installers of industrialized housing and buildings. Opting out of these changes could result in denial of building permits within municipalities, which are required to comply with the statewide energy code. The proposed rules will result in the increased health and safety of the public due to housing and buildings being constructed to meet the updated codes and to comply with energy standards mandated by SECO. Considering the health, safety, environmental and economic welfare of the state, the Department has determined that there are no other reasonable methods to reduce economic impact while achieving the purpose of the rules. Therefore, a Regulatory Flexibility Analysis as detailed under Texas Government Code §2006.002 is not required.

Comments on the proposal may be submitted by mail to Neta Lamas, Legal Assistant, General Counsel's Office, Texas Department of Licensing Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). Please include "IHB" in the subject line. The deadline for comments is 30 days after publication in the *Texas Register*.

#### **16 TAC §70.100, §70.101**

The repeal is proposed under the Texas Occupations Code, Chapters 51 and 1202, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the proposal.

§70.100. Mandatory Building Codes.

§70.101. Amendments to Mandatory Building Codes.

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 October 31, 2016.

TRD-201605662

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8614



**16 TAC §70.100, §70.101**

The new rules are proposed under the Texas Occupations Code, Chapters 51 and 1202, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the proposal.

§70.100. Mandatory Building Codes.

(a) Effective August 1, 2017, all industrialized housing and buildings, modules, and modular components, shall be constructed in accordance with the codes referenced in subsections (c) - (j).

(b) Other codes referenced in any of the mandatory building codes adopted in subsections (c) - (j), shall be considered part of the requirements of these codes to the prescribed extent of each such reference.

(c) The *International Building Code*, 2015 edition, published by the International Code Council, is adopted as the Building Code of the Texas Industrialized Housing and Buildings Program.

(d) The *International Residential Code*, 2015 edition, published by the International Code Council, is adopted as the Residential Code for one- and two-family dwellings of the Texas Industrialized Housing and Buildings Program.

(e) The *International Fuel Gas Code*, 2015 edition, published by the International Code Council, is adopted as the Fuel Gas Code of the Texas Industrialized Housing and Buildings Program.

(f) The *International Mechanical Code*, 2015 edition, published by the International Code Council, is adopted as the Mechanical Code of the Texas Industrialized Housing and Buildings Program.

(g) The *International Plumbing Code*, 2015 edition, published by the International Code Council, is adopted as the Plumbing Code of the Texas Industrialized Housing and Buildings Program.

(h) The *International Energy Conservation Code*, 2015 edition, published by the International Code Council, is adopted as the Energy Conservation Code of the Texas Industrialized Housing and Buildings Program.

(i) The *International Existing Building Code*, 2015 edition, published by the International Code Council, is adopted as the Existing Building Code for industrialized buildings that are altered in accordance with §70.74(f).

(j) The *National Electrical Code*, 2014 edition, published by the National Fire Protection Association, is adopted as the Electrical Code of the Texas Industrialized Housing and Buildings Program.

(k) The effective dates of adoption of past editions of the mandatory building codes are as follows:  
Figure: 16 TAC §70.100(k)

§70.101. Amendments to Mandatory Building Codes.

(a) The council shall consider and review all amendments to these codes which are approved and recommended by ICC, and if they are determined to be in the public interest, the amendments shall be effective 180 days following the date of the council's determination or at a later date as set by the council.

(b) Any amendment proposed by a local *building official*, and determined by the council following a public hearing to be essential to the health and safety of the public on a statewide basis, shall become effective 180 days following the date of the council's determination or at a later date as set by the council.

(c) The 2015 *International Building Code* shall be amended as follows.

(1) Amend *Section 101 General* as follows.

(A) Amend *Section 101.1 Title* to read as follows: "These regulations shall be known as the Building Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend *Section 101.2 Scope* by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(C) Amend *Section 101.2.1 Appendices* by adding the following: "Appendices C, F, and K shall be considered part of this code."

(D) Amend *Section 101.4 Referenced codes* to read as follows: "The other codes listed in Sections 101.4.1 through 101.4.9 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference. Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(E) Amend *Section 101.4.7 Existing buildings* to add the following sentence: "Moved industrialized buildings that bear approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council."

(F) Add new *Section 101.4.8 Electrical* to read as follows: "The provisions of Appendix K shall apply to the installation of

electrical systems, including alterations, repairs, replacements, equipment, appliances, fixtures, fittings and appurtenances thereto. Any reference to NFPA 70 or the Electrical Code shall mean the Electrical Code as adopted."

(G) Add new *Section 101.4.9 Accessibility* to read as follows: "Buildings and facilities shall be designed and constructed to be accessible in accordance with this code and the *Texas Accessibility Standards* (TAS). Wherever reference elsewhere in this code is made to ICC A117.1, the TAS of Texas Government Code, Chapter 469, Elimination of Architectural Barriers shall be substituted. Buildings subject to the requirements of the *Texas Accessibility Standards* are described in Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 68."

(2) Amend *Section 104.1 General* by adding the following: "The term *building official* as used in this code, or as used in the codes and standards referenced in this code, shall mean the Texas Commission of Licensing and Regulation, the executive director of the Texas Department of Licensing and Regulation, the Texas Industrialized Building Code Council, or the local *building official* in accordance with the powers and duties assigned to each in Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings."

(3) Amend *Section 107.1 General* by adding the following: "Construction documents depicting the structural design of buildings to be located in hurricane prone regions shall be prepared and sealed by a Texas licensed professional engineer."

(4) Amend *Section 111 Certificate of Occupancy* as follows.

(A) Amend *Section 111.1 Use and occupancy* to read as follows: "A building or structure shall not be used or occupied, and a change in the existing use or occupancy classification of a building or structure or portion thereof shall not be made, until the local *building official* has issued a certificate of occupancy in accordance with the locally adopted rules and regulations."

(B) Amend *Section 111.2 Certificate issued* to read as follows. "The local *building official* shall issue a certificate of occupancy in accordance with the locally adopted rules and regulations. After the local *building official* inspects the industrialized house or building and does not find violations of the provisions of this code or other laws that are enforced by the department of building safety, the local *building official* shall issue a record of final inspection authorizing the release of the house or building for occupancy."

(C) Delete Items 1 through 12 of *Section 111.2*.

(D) Amend *Section 111.3 Temporary occupancy* to read as follows: "The local *building official* may issue a temporary certificate of occupancy in accordance with locally adopted rules and regulations."

(E) Add new *Section 111.5 Industrialized housing and buildings installed outside the jurisdiction of a municipality or within a municipality without an inspection department* to read as follows: "The installation of buildings installed outside the jurisdiction of a municipality or within a municipality without an inspection department shall comply with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, Administrative Rules Industrialized Housing and Buildings."

(5) Amend *Section 311.3 Low-hazard storage, Group S-2* by adding the following to the list of uses that are covered by this occupancy group: "Equipment shelters or equipment buildings."

(6) Amend *Chapter 11 Accessibility* as follows.

(A) Amend *Section 1101.2 Design* to read as follows: "Buildings and facilities shall be designed and constructed to be *accessible* in accordance with this code and the *Texas Accessibility Standards* (TAS)"

(B) Delete *Section 1102 through Section 1111*.

(7) Amend *Chapter 35 Referenced Standards* as follows.

(A) Delete the following standard: "*ICC A117.1-09, Accessible and Usable Buildings and Facilities*."

(B) Add TDLR, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711 as a promulgating agency; add 2012 TAS, *Texas Accessibility Standards* as adopted under 16 Texas Administrative Code, Chapter 68 as the referenced standard; and add code sections 202, 907.5.2.3.3, 1009.8.2, 1009.9, 1009.11, 1010.1.9.7, 1012.1, 1012.6.5, 1012.10, 1013.4, 1023.9, and 1101.2 as the referenced code sections.

(C) Add code section 101.4.8 as a referenced code section for *NFPA Standard 70-14, National Electrical Code*.

(8) Amend *Section K111.1 Adoption* to read as follows: "Electrical systems and equipment shall be designed, constructed and installed in accordance with NFPA 70 except as otherwise provided in this code."

(d) The 2015 *International Residential Code* shall be amended as follows.

(1) Amend *Section R101 General* as follows.

(A) Amend *Section R101.1 Title* to read as follows: "These regulations shall be known as the Residential Code for One- and Two-family Dwellings of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend *Section R101.2 Scope* by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend *Section R102 Applicability* as follows.

(A) Amend *Section R102.4 Referenced codes and standards* to read as follows: "The codes and standards referenced in this code shall be considered part of the requirements of this code to the prescribed extent of each reference and as further regulated in Sections R102.4.1 through R102.4.4. Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(B) Add new *Section R102.4.3 Electrical code* to read as follows: "The provisions of the *National Electrical Code*, NFPA 70, shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto. Any reference to NFPA 70 or the Electrical Code shall mean the Electrical Code as adopted. Any reference to chapters 34 through 43 of this code shall mean the Electrical Code as adopted."

(C) Add new *Section R102.4.4 TDI Code- Wind design* to read as follows: "The wind design of buildings to be placed in the first tier counties along the Texas coast and designated catastrophe areas as defined by the Texas Department of Insurance (TDI) shall also comply with the current effective code and amendments adopted by

the TDI, hereafter referred to as the TDI Code. Where conflicts occur between the provisions of this code and the TDI Code as they relate to the requirements for wind design, the more stringent requirements shall apply. Where conflicts occur between the provisions of this code and the editions of the codes specified by the Texas Department of Insurance as they relate to requirements other than wind design, this code shall apply."

(D) Amend *Section R102.5 Appendices* by adding the following: "Appendices G, H, K, P, S and U shall be considered part of this code."

(E) Add new *Section R102.8 Moved industrialized housing* to read as follows: "Moved industrialized housing shall comply with the requirements of the local building official for moved buildings."

(3) Amend *Section R104.1 General* by adding the following: "The term *building official* as used in this code, or as used in the codes and standards referenced in this code, shall mean the Texas Commission of Licensing and Regulation, the executive director of the Texas Department of Licensing and Regulation, the Texas Industrialized Building Code Council, or the local *building official* in accordance with the powers and duties assigned to each in Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings."

(4) Amend *Section R106.1 Submittal documents* by adding the following: "Construction documents depicting the structural design of buildings to be located in hurricane prone regions and in the first tier counties along the Texas coast and designated catastrophe areas as defined by the Texas Department of Insurance (TDI) shall be prepared and sealed by a Texas licensed professional engineer."

(5) Amend *Section R110 Certificate of Occupancy* as follows.

(A) Amend *Section R110.1 Use and occupancy* by amending the first sentence to read as follows: "A building or structure shall not be used or occupied, and a change in the existing use or occupancy classification of a building or structure or portion thereof shall not be made, until the local *building official* has issued a certificate of occupancy in accordance with locally adopted rules and regulations."

(B) Amend *Section R110.2 Change in use* to read as follows: "Changes in the character or use of new industrialized housing are not allowed. Changes in the character or use of existing industrialized housing shall not be made except as authorized by the local *building official*."

(C) Amend *Section R110.3 Certificate issued* to read as follows: "The local *building official* shall issue a certificate of occupancy in accordance with the locally adopted rules and regulations. After the local *building official* inspects the industrialized house or building and does not find violations of the provisions of this code or other laws that are enforced by the department of building safety, then the local *building official* shall issue a record of final inspection authorizing the release of the house or building for occupancy."

(D) Delete Items 1 through 9 of *Section R110.3*.

(E) Amend *Section R110.4 Temporary occupancy* to read as follows: "The local *building official* may issue a temporary certificate of occupancy in accordance with locally adopted rules and regulations."

(F) Add new *Section R110.6 Industrialized housing installed outside the jurisdiction of a municipality or in a municipality without an inspection department* to read as follows: "The installation of industrialized housing installed outside the jurisdiction of a municipality or within a municipality without an inspection department shall

comply with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, Administrative Rules Industrialized Housing and Buildings."

(6) Amend *Section R301.2 Climatic and geographic design criteria* by adding the following sentence: "If no additional criteria have been established, or if there is no local jurisdiction to set the additional criteria, then the additional criteria shall be in accordance with the requirements in the footnotes of Table R301.2(1) and Sections R301.2.1 through R301.8 of this code."

(7) Amend *Section R302.2 Townhouses, Item #2* by adding the following exception: "Exception: Two structurally independent one-hour fire-resistance-rated wall assemblies, tested in accordance with ASTM E 119 or UL 263 with exposure from both sides, may be substituted for a 2-hour fire-resistance-rated common wall assembly. The walls shall be constructed without plumbing or mechanical equipment, ducts or vents in the cavity of the walls. Penetrations of each wall for electrical outlet boxes shall be in accordance with Section R302.4."

(8) Amend *Section R303.9 Required heating* to read as follows: "Every dwelling unit shall be provided with heating facilities capable of maintaining a minimum room temperature of 68°F (20°C) at a point 3 feet (914 mm) above the floor and 2 feet (610 mm) from exterior walls in habitable rooms at the design temperature. The installation of one or more portable space heaters shall not be used to achieve compliance with this section."

(9) Amend *Section R313 Automatic Fire Sprinkler Systems* as follows.

(A) Amend *Section R313.1 Townhouse automatic fire sprinkler systems* to read as follows: "The common wall between townhouses shall be constructed in accordance with Section R302.2(2) if an automatic residential fire sprinkler system is not installed. The fire-rating of the common wall may be reduced in accordance with Section R302.2(1) if an automatic residential fire sprinkler system is installed in townhouses."

(B) Amend *Section R313.2 One- and two-family dwelling automatic fire systems* to read as follows: "One- and two-family dwelling automatic fire sprinkler systems. The construction, projections, openings and penetrations of exterior walls of one- and two-family dwellings and accessory buildings shall comply with Table R302.1(1) if an automatic residential fire sprinkler system is not installed. The construction, projections, openings and penetrations of the exterior walls of one- and two-family dwellings and their accessory uses may be constructed in accordance with the requirements of Table R302.1(2) if an automatic residential fire sprinkler system is installed in one- and two-family dwellings."

(10) Amend the second sentence of *Section R902.1 Roofing covering materials* to read as follows: "Class A, B or C roofing shall be installed."

(11) Amend *Chapter 11 Energy Efficiency* as follows.

(A) Replace *N1101.2 Intent* with *N1101.2 Compliance* to read as follows: "Compliance shall be demonstrated by meeting the requirements of the *Residential Provisions* of the *International Energy Conservation Code*."

(B) Delete *Section N1101.3* through *Section N1111*.

(12) Delete *Part VIII- Electrical*, Chapters 34 through 43.

(13) Amend *Chapter 44 Referenced Standards* as follows.

(A) Delete code sections N1101.5 and N1101.13 as referenced code sections for *IECC-15, International Energy Conservation Code*.

(B) Add code section R102.3 and delete code sections E3401.1, E3401.2, E4301.1, Table E4303.2, E4304.3, and E4304.4 as referenced code sections for *NFPA 70-14, National Electrical Code*.

(C) Add TDI, Texas Department of Insurance, Windstorm Inspections Program, 333 Guadalupe Street, Austin, Texas 78701 as a promulgating agency, add *TDI Code, Building Codes adopted by TDI for the Windstorm Inspection Program*, as the referenced standard, and add code sections R102.4.4 and R106.1 as the referenced code sections.

(14) Amend *Section U101.1 General* to read as follows: "These provisions shall be applicable for new construction where solar-ready provisions are provided."

(e) The 2015 *International Fuel Gas Code* shall be amended as follows.

(1) Amend *Section 101 General* as follows.

(A) Amend *Section 101.1 Title* to read as follows: "These regulations shall be known as the Fuel Gas Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend *Section 101.2 Scope* by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend *Section 102 Applicability* as follows.

(A) Amend *Section 102.4 Additions, alterations or repairs* by replacing the first sentence with the following: "The provisions of the *International Existing Building Code* shall apply to all matters governing the repair, alterations, or additions of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(B) Amend *Section 102.5 Change in occupancy* by adding the following to the beginning of the section: "The provisions of the *International Existing Building Code* shall apply to all matters governing a change in the occupancy of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(C) Amend *Section 102.7 Moved buildings* by replacing the first sentence with the following: "Moved industrialized buildings that bear approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council."

(D) Amend *Section 102.8 Referenced codes and standards* by adding the following: "Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(3) Amend *Chapter 8 Referenced Standards* by adding ICC Standard *IEBC-15, International Existing Building Code*, referenced in code sections 102.4 and 102.5.

(f) The 2015 *International Mechanical Code* shall be amended as follows.

(1) Amend *Section 101 General* as follows.

(A) Amend *Section 101.1 Title* to read as follows: "These regulations shall be known as the Mechanical Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend *Section 101.2 Scope* by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend *Section 102 Applicability* as follows.

(A) Amend *Section 102.4 Additions, alterations or repairs* by replacing the first sentence with the following: "The provisions of the *International Existing Building Code* shall apply to all matters governing the repair, alterations, or additions of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(B) Amend *Section 102.5 Change in occupancy* by replacing the first sentence with the following: "The provisions of the *International Existing Building Code* shall apply to all matters governing a change in the occupancy of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(C) Amend *Section 102.7 Moved buildings* by replacing the first sentence with the following: "Moved industrialized buildings that bear approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council."

(D) Amend *Section 102.8 Referenced codes and standards* by adding the following: "Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(3) Amend *Chapter 15 Referenced Standards* by adding ICC Standard *IEBC-15, International Existing Building Code*, referenced in code sections 102.4 and 102.5.

(g) The 2015 *International Plumbing Code* shall be amended as follows.

(1) Amend *Section 101 General* as follows.

(A) Amend *Section 101.1 Title* to read as follows: "These regulations shall be known as the Plumbing Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend *Section 101.2 Scope* by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrial-

ized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend *Section 102 Applicability* as follows.

(A) Amend *Section 102.4 Additions, alterations or repairs* by replacing the first sentence with the following: "The provisions of the *International Existing Building Code* shall apply to all matters governing the repair, alterations, or additions of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(B) Amend *Section 102.5 Change in occupancy* by adding the following to the beginning of the section: "The provisions of the *International Existing Building Code* shall apply to all matters governing a change in the occupancy of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(C) Amend *Section 102.7 Moved buildings* to add the following sentence: "Moved industrialized buildings that bear approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council."

(D) Amend *Section 102.8 Referenced codes and standards* by adding the following: "Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(3) Amend *Section 403 Minimum Plumbing Facilities* as follows.

(A) Add new *Section 403.5 Industrialized housing and buildings exceptions* to read as follows: "Plumbing fixtures for industrialized buildings shall be provided as required by Table 403.1 except as allowed in Sections 403.5.1, 403.5.2 and 403.5.3."

(B) Add new *Section 403.5.1 Buildings that are not normally occupied* to read as follows: "Buildings, such as equipment or communication shelters, that are not normally occupied or that are only occupied to service equipment, shall not be required to provide plumbing facilities. EXCEPTION: Buildings that are not normally occupied that are also classified as a Group H occupancy must be provided with plumbing facilities required for this type of occupancy such as requirements for emergency showers and eyewash stations."

(C) Add new *Section 403.5.2 Other industrialized buildings* to read as follows: "All other industrialized buildings shall contain the minimum plumbing fixtures required in accordance with Table 403.1 unless the building is a non-site specific building and the plans and the data plate contain a special condition/limitation note that the minimum number of required fixtures shall be provided in another building located on the installation site with a path of travel that does not exceed a distance of 500 feet. The plumbing facilities must be accessible to the occupants of the industrialized building. Non-site specific buildings and special condition limitation notes shall be as defined in the 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program."

(D) Add new *Section 403.5.3 Requirements for service sinks for industrialized buildings* to read as follows: "Commercial in-

dustrialized buildings with areas of less than or equal to 1,800 square feet shall not be required to contain a service sink provided that the building contains a lavatory and water closet that can be substituted for the service sink. EXCEPTION: A building of less than 1,800 square feet in area without any plumbing facilities shall comply with section 403.5.2."

(4) Amend *Chapter 13 Referenced Standards* by adding ICC Standard IEBC-15, *International Existing Building Code*, referenced in code sections 102.4 and 102.5.

(h) The 2015 *International Energy Conservation Code* shall be amended as follows.

(1) Amend *Section C101 Scope and General Requirements* and *R101 Scope and General Requirements* as follows.

(A) Amend *Section C101.1 Title* and *Section R101.1 Title* to read as follows: "These regulations shall be known as the Energy Conservation Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend *Section C101.2 Scope* and *R101.2 Scope* by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend *Section C102 Alternate Materials - Method of Construction, Design or Insulating Systems* and *R102 Alternate Materials, Design and Methods of Construction and Equipment* as follows.

(A) Add new *Section C102.1.2 Compliance software tools* to read as follows: "The following software tools may be used to demonstrate energy code compliance for commercial buildings. The mandatory requirements of this code apply regardless of the software program that is used to demonstrate compliance. 1. The PLLN/DOE software programs *COMcheck*. 2. Software programs approved by the State Energy Conservation Office. 3. Other software programs if approved by the executive director or the Council."

(B) Add new *Section R102.1.2 Compliance software tools* to read as follows: "The following software tools may be used to demonstrate energy code compliance for commercial buildings. The mandatory requirements of this code apply regardless of the software program that is used to demonstrate compliance. 1. The PLLN/DOE software programs *REScheck*. 2. The Texas Energy Systems Laboratory *International Code Compliance Calculator, IC3*. 3. Software programs approved by the State Energy Conservation Office. 4. Other software programs if approved by the executive director or the Council."

(3) Amend *Section C106.1 Referenced codes and standards* and *Section R106.1 Referenced Codes and Standards* by adding the following: "Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(4) Add new *Section C401.2.2 Buildings for state agencies and institutions of higher education* to read as follows: "Buildings for state agencies and institutions of higher education shall comply with the energy standard adopted pursuant to Texas Government Code, §447.004 by the State Energy Conservation Office (SECO), and implementation through 34 Texas Administrative Code, Chapter 19, Subchapter C, Energy Conservation Design Standards."

(5) Add new Section C501.7 Moved buildings to add the following sentence: "Moved industrialized buildings that bear approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council."

(6) Amend Chapter C6 Referenced Standards and Chapter R6 Referenced Standards as follows.

(A) Add to Chapter C6 PNNL/DOE, Pacific Northwest National Laboratory/Department of Energy Conservation, <http://222.energycodes.gov>, as a promulgating agency, COMcheck Version 3.8.2 or later, Commercial Energy Compliance Software as the referenced standard, and section C102.1.2 as the referenced code section.

(B) Add to Chapter R6 PNNL/DOE, Pacific Northwest National Laboratory/Department of Energy Conservation, <http://222.energycodes.gov>, as a promulgating agency, REScheck Version 4.4.1 or later, Residential Energy Compliance Software as the referenced standard, and section R102.1.2 as the referenced code section.

(C) Add to Chapter R6 the Texas Energy Systems Laboratory, 402 Harvey Mitchell Parkway South, College Station, Texas 77845-3581, as a promulgating agency, IC3, v 3.10 or later, International Code Compliance Calculator as the referenced standard, and section R102.1.2 as the referenced code section.

(i) The 2015 International Existing Building Code shall be amended as follows.

(1) Amend Section 101 General as follows.

(A) Amend Section 101.1 Title to read as follows: "These regulations shall be known as the Existing Building Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend Section 101.2 Scope by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend Section 102 Applicability as follows.

(A) Amend Section 102.4 Referenced codes and standards to read as follows: "The codes and standards referenced in this code shall be considered to be part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Sections 102.4.1 through 102.4.3. Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(B) Add new Section 102.4.3 Accessibility for existing buildings to read as follows: "Wherever reference elsewhere in this code is made to sections in Chapter 11 of the International Building Code or ICC A117.1, the Texas Accessibility Standards (TAS) of Texas Government Code, Chapter 469, Elimination of Architectural Barriers shall be substituted."

(3) Amend the first sentence of Section 1401.2 Applicability to read as follows: "Structures existing prior to August 1, 2017, in which there is work involving additions, alterations or changes of occupancy shall be made to conform to the requirements of this chapter or the provisions of Chapters 5 through 13."

(4) Amend Chapter 15 Referenced Standards as follows.

(A) Delete the following standard: "ICC A117.1-09, Accessible and Usable Buildings and Facilities."

(B) Add TDLR, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711 as a promulgating agency; add 2012 TAS, Texas Accessibility Standards as adopted under 16 Texas Administrative Code, Chapter 68 as the referenced standard; and add code sections 102.4, 410.8.2, 410.8.3, 410.8.10, 705.1.2, and 705.1.3 as the referenced code sections.

(j) The 2014 National Electrical Code shall be amended to add the following to Article 310.1 Scope: "Aluminum and copper-clad aluminum shall not be used for branch circuits in buildings classified as a residential occupancy. Aluminum and copper-clad aluminum conductors, of size number 4 AWG or larger, may be used in branch circuits in buildings classified as occupancies other than residential."

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 October 31, 2016.

TRD-201605663

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: December 18, 2016

For further information, please call: (512) 463-8614



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 91. CANCER

##### SUBCHAPTER A. CANCER REGISTRY

###### 25 TAC §§91.2, 91.4, 91.6, 91.7, 91.9, 91.11, 91.12

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§91.2, 91.4, 91.6, 91.7, 91.9, 91.11 and 91.12, concerning the operation of the Texas Cancer Registry.

#### BACKGROUND AND PURPOSE

The purpose of the amendments is to implement House Bill (HB) 2641, 84th Legislature, Regular Session, 2015, which amended Health and Safety Code, §82.008, authorizing the submission of data through a health information exchange, and provide updated language of adopted rules to enhance the understanding of the program rules for the Texas Cancer Registry. The amendments will provide the additional option for health care providers to report data through a health information exchange.

The rules implement Health and Safety Code, Chapter 82, Cancer Registry, and outlines the purpose of the Texas Cancer Registry, including who, what, where, when, and how to report cancer data to the cancer registry, as well as compliance, confidentiality, quality assurance, and requests for data.

Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 91.1 - 91.12 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

#### SECTION-BY-SECTION SUMMARY

The amendments to §91.2 include deleting the definition of "branch" and replacing references to the "branch" with "Texas Cancer Registry" or "Department of State Health Services;" this change was preemptive as the Health and Human Services Transformation may affect future organizational structure. Additionally, the definition of "personal cancer data" was deleted and replaced with a new definition of "confidential cancer data" to better clarify distinctions in the types of data. In addition, a new definition for "reporting entity" was added to provide context for amendments related to health information exchange as a result of the passage of HB 2641, as well as subsequent reordering and renumbering of section.

The amendments to §91.4 include replacing references to "branch" with "Texas Cancer Registry."

The amendments to §91.6 include adding language to subsection (a) to allow for the submission of data to the Texas Cancer Registry through a health information exchange.

The amendments to §91.7 include replacing the reference to "branch" with "Texas Cancer Registry."

The amendments to §91.9 include inserting "cancer" in subsection (c) to clarify the requests for confidential or statistical cancer data.

The amendments to §91.11 include replacing references to "branch" with "Texas Cancer Registry," removing the phrase "and printed," and adding an email address contact in subsection (a) as another method of requesting information or cancer data. In subsection (b)(3), the word "sent" was replaced with "submitted" to be consistent with rule text.

The amendments to §91.12 include adding an email address contact, replacing a reference to "Institutional Review Board" with the "Texas Cancer Registry" in the mailing address in subsection (a)(1). The references to "branch" are being replaced with "Texas Cancer Registry." The name of §91.12 is revised to "Requests and Release of Confidential Cancer Data" and throughout the rule, "confidential cancer data" is replacing the references to "personal cancer data."

#### FISCAL NOTE

Heidi Bojes, PhD, MPH, Section Director, Environmental Epidemiology and Disease Registries Section has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. Bojes has also determined that there would be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections as proposed. 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 sections as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Dr. Bojes has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is that it encourages health information exchange connectivity and interoperability.

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Ashley Dixon, MPH, Cancer Epidemiology and Surveillance Branch, Mail Code 1928, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, (512) 776-3629, or by email to ashley.dixon@dshs.state.tx.us. 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 rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §82.008 which provides the department with the authority to accept submissions of data through a health information exchange; 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 rules implements Government Code, §2001.039.

The amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 82 and 1001.

§91.2. *Definitions.*

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

(1) Act--The Texas Cancer Incidence Reporting Act, Texas Health and Safety Code, Chapter 82.

~~{(2) Branch--Cancer Epidemiology and Surveillance Branch of the department.}~~

(2) ~~[(3)]~~ Cancer--Includes a large group of diseases characterized by uncontrolled growth and spread of abnormal cells; any condition of tumors having the properties of anaplasia, invasion, and metastasis; a cellular tumor the natural course of which is fatal, including intracranial and central nervous system malignant, borderline, and benign tumors as required by the national program of cancer registries; and malignant neoplasm, other than non-melanoma skin cancers such as basal and squamous cell carcinomas.

(3) ~~[(4)]~~ Cancer Reporting Handbook--The Texas Cancer Registry's ~~[branch's]~~ manual for cancer reporters that documents reporting procedures and format.

(4) ~~[(5)]~~ Clinical laboratory--An accredited facility in which tests are performed identifying findings of anatomical changes; specimens are interpreted and pathological diagnoses are made.

(5) Confidential cancer data--Information that includes items that may identify an individual, and is subject to Health and Safety Code, §82.009.

(6) Department--Department of State Health Services.

(7) Health care facility--A general or special hospital as defined by the Health and Safety Code, Chapter 241; an ambulatory surgical center licensed under the Health and Safety Code, Chapter 243; an institution licensed under the Health and Safety Code, Chapter 242; or any other facility, including an outpatient clinic, that provides diagnostic or treatment services to patients with cancer.

(8) Health care practitioner--A physician as defined by Occupations Code, §151.002 or a person who practices dentistry as described by the Occupations Code, §251.003.

~~[(9) Personal cancer data--Information that includes items that may identify an individual.]~~

(9) ~~[(10)]~~ Quality assurance--Operational procedures by which the accuracy, completeness, and timeliness of the information reported to the department can be determined and verified.

(10) ~~[(11)]~~ Report--Information provided to the department that notifies the appropriate authority of the occupancy of a specific cancer in a person, including all information required to be provided to the department.

(11) Reporting Entity--A reporting entity may include a health care facility, clinical laboratory, health care practitioner, or a health information exchange as defined by Health and Safety Code, §182.151.

(12) Research--A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

(13) Statistical cancer data--Aggregate presentation of individual records on cancer cases excluding patient identifying information.

(14) Texas Cancer Registry--The cancer incidence reporting system administered by the Department of State Health Services [Cancer Epidemiology and Surveillance Branch].

§91.4. *What to Report.*

(a) Reportable conditions.

(1) The cases of cancer to be reported to the Texas Cancer Registry ~~[branch]~~ are as follows:

(A) all neoplasms with a behavior code of two or three in the most current edition of the International Classification on Diseases for Oncology (ICD-O) of the World Health Organization with the exception of those designated by the Texas Cancer Registry ~~[branch]~~ as non-reportable in the Cancer Reporting Handbook; and

(B) all benign and borderline intracranial and central nervous system neoplasms as required by the national program of cancer registries.

(2) Codes and taxa of the most current edition of the International Classification of Diseases, Clinical Modification of the World Health Organization which correspond to the Texas Cancer Registry's ~~[branch's]~~ reportable list are specified in the Cancer Reporting Handbook.

(b) Reportable information.

(1) Except as provided in paragraph (2) of this subsection and health care practitioners in §91.5(c) of this title (relating to When to Report), those data required to be reported for each cancer case shall include:

(A) name, address, zip code, and county of residence;

(B) social security number, date of birth, gender, race and ethnicity, marital status, birthplace, and primary payer at time of diagnosis, to the extent such information is available from the medical record;

(C) information on industrial and occupational history, smoking status, height and weight to the extent such information is available from the medical record;

(D) diagnostic information including the cancer site and laterality, cell type, tumor behavior, markers, grade and size, stage of disease, date of diagnosis, diagnostic confirmation method, sequence number, and other primary tumors;

(E) first course of cancer-related treatment, including dates and types of procedures;

(F) text information to support cancer diagnosis, stage and treatment codes;

(G) health care facility or practitioner related information including reporting institution number, casefinding source, type of reporting source, medical record number, registry number, tumor record number, class of case, date of first contact, date of last contact, vital status, facility referred from, facility referred to, managing physician, follow-up physician, date abstracted, abstractor, and electronic record version; and

(H) clinical laboratory related information including laboratory name and address, pathology case number, pathology report date, pathologist, and referring physician name and address.

(2) The department or its authorized representative may exempt a cancer reporter from providing specific reportable data items delineated in paragraph (1) of this subsection to the extent that those data to be exempted are not collected by the cancer reporter.

(3) Except as provided in §91.6(b) of this title (relating to How to Report), each report shall:

(A) be electronically readable and contain all data items required in paragraph (1) of this subsection;

(B) be fully coded and in a format prescribed by the Texas Cancer Registry [~~branch~~];

(C) meet all quality assurance standards utilized by the Texas Cancer Registry [~~branch~~];

(D) in the case of individuals who have more than one form of cancer, be submitted separately for each primary cancer diagnosed;

(E) be submitted to the Texas Cancer Registry [~~branch~~] electronically; and

(F) be transmitted by secure means at all times to protect the confidentiality of the data.

#### §91.6. How to Report.

(a) Reports of cancer from health care facilities, clinical laboratories and health care practitioners shall be submitted to the Texas Cancer Registry [~~branch~~] electronically using a secure electronic process as defined by the department. At the request and with the authorization of the applicable health care facility, clinical laboratory, or health care practitioner, data may be furnished to the Texas Cancer Registry through a health information exchange.

(b) The Texas Cancer Registry may accept the submission of paper copies of medical records from a health care facility, pathology reports from a clinical laboratory and reports or subsets of reports from a health care practitioner under the following conditions.

(1) The department, or its authorized representative, shall determine that such paper submissions are more expedient than electronic reporting.

(2) The acceptance of paper submissions from a health care facility, clinical laboratory or health care practitioner shall be approved by the department or its authorized representative.

(3) The department, or its authorized representative, may approve acceptance of paper submissions from defined groups or types of health care facilities, clinical laboratories or health care practitioners.

(4) All records and reports provided to the Texas Cancer Registry pursuant to this subsection must be transmitted by secure means at all times to protect the confidentiality of the data.

#### §91.7. Where to Report.

Data reports should be submitted to the Texas Cancer Registry [~~branch~~] as specified in the Cancer Reporting Handbook.

#### §91.9. Confidentiality and Disclosure.

(a) Pursuant to the Act, Chapter 82, §82.009, all data obtained is for the confidential use of the department and the persons or entities, public or private, that the department determines are necessary to carry out the intent of the Act.

(b) Limited release of the data is allowed by the Act, §82.008(h) and §82.009(b).

(c) Any requests for confidential or statistical cancer data shall be made in accordance with §§91.11 or §91.12 of this title (relating to Cancer Registry).

(d) The Texas Cancer Registry is subject to state law that requires compliance with portions of the federal law and regulations cited in §91.3(e) of this title (relating to Who Reports, Access to Records). The department is authorized to use and disclose, for purposes described in the Act, cancer data without patient consent or authorization under 45 C.F.R. §164.512(a) relating to uses and disclosures required by law, §164.512(b)(1) and (2) relating to uses and disclosures for public health activities, and §164.512(i) relating to uses and disclosures for research purposes.

#### §91.11. Requests for Statistical Cancer Data.

(a) Statistical cancer data previously analyzed [~~and printed~~] are available upon written or oral request to the Texas Cancer Registry [~~branch~~]. All other requests for statistical cancer data shall be in writing and directed to: Texas Cancer Registry [~~Cancer Epidemiology and Surveillance Branch~~], Mail Code 1928, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347 or CancerData@dshs.state.tx.us.

(b) To ensure that the proper data are provided, the request shall include, but not be limited to, the following information:

(1) name, address, and telephone number of the person requesting the information;

(2) type of data needed and for what years (e.g. lung cancer incidence rates, Brewster County, 1998 - 2002); and

(3) name and address of person(s) to whom data and billings are to be submitted [~~sent~~] (if applicable).

#### §91.12. Requests and Release of Confidential [~~Personal~~] Cancer Data.

(a) Data requests for research.

(1) Requests for confidential [~~personal~~] cancer data shall be in writing and directed to: Texas Cancer Registry, Mail Code 1928, Department of State Health Services, [Institutional Review Board (IRB)], P.O. Box 149347, Austin, Texas 78714-9347 or CancerData@dshs.state.tx.us.

(2) Written requests for confidential cancer [~~personal~~] data shall meet the submission requirements of the department's Institutional Review Board (IRB) [~~IRB~~] before release.

(3) The Texas Cancer Registry [~~branch~~] may release confidential [~~personal~~] cancer data to state, federal, local, and other public agencies and organizations if approved by the IRB.

(4) The Texas Cancer Registry [~~branch~~] may release confidential [~~personal~~] cancer data to private agencies, organizations, and associations if approved by the IRB.

(5) The Texas Cancer Registry [~~branch~~] may release confidential [~~personal~~] cancer data to any other individual or entities for reasons deemed necessary by the department to carry out the intent of the Act if approved by the IRB.

(b) Data requests for non-research purposes.

(1) The Texas Cancer Registry [~~branch~~] may provide reports containing confidential cancer [~~personal~~] data back to the respective reporting entity from records previously submitted to the Texas Cancer Registry [~~branch~~] from each respective reporting entity for the purposes of case management and administrative studies. These reports will not be released to any other entity.

(2) The Texas Cancer Registry [branch] may release confidential cancer [personal] data to other areas of the department, provided that the disclosure is required or authorized by law. All communications of this nature shall be clearly labeled "Confidential" and will follow established departmental internal protocols and procedures.

(3) The Texas Cancer Registry [branch] may release confidential [personal] cancer data to state, federal, local, and other public agencies and organizations in accordance with subsection (a) of this section.

(4) The Texas Cancer Registry [branch] may release confidential [personal] cancer data to any other individual or entities for reasons deemed necessary to carry out the intent of the Act and in accordance with subsection (a) of this section.

(5) An individual who submits a valid authorization for release of an individual cancer record shall have access to review or obtain copies of the information described in the authorization for release.

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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Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: December 18, 2016

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



## CHAPTER 97. COMMUNICABLE DISEASES

### SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

#### 25 TAC §§97.3, 97.4, 97.13

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§97.3, 97.4, and 97.13, concerning the control of communicable diseases.

#### BACKGROUND AND PURPOSE

The purpose of the amendments is to clarify the conditions and diseases that must be reported; clarify the minimal reportable information requirements for the conditions and diseases; and adjust the list of reportable diseases to include diseases and conditions of concern to public health. The amendments comply with guidance from the Centers for Disease Control and Prevention regarding surveillance for reportable conditions, and allow the department to conduct more relevant and efficient disease surveillance. The amendments comply with Health and Safety Code, Chapter 81, which requires the department to identify each communicable disease or health condition which is reportable under the chapter.

House Bill (HB) 2641, 84th Legislature, Regular Session, 2015, amended Health and Safety Code, §81.044, authorizing the submission of data through a health information exchange (HIE), and provide updated language of adopted rules to enhance the understanding of the rules. The amendments will provide the

additional option for health care providers to report data through a health information exchange.

#### SECTION-BY-SECTION SUMMARY

The proposed amendments to §97.3(a)(2)(A), §97.4(a)(1), and §97.13(c), delete "causing severe acute respiratory disease" in "novel coronavirus causing severe acute respiratory disease" to make sure that all novel coronavirus infections get reported and fully investigated, not just the severe cases. In addition, §97.3(a)(2)(A) expands influenza-associated deaths investigations to people of any age, and adds language to clarify the types of hepatitides.

The proposed amendments to §97.3(a)(3)(B), (C), and (D), update the names of the revised Tuberculosis forms and specify the minimal information that should be reported.

In addition, language is added in §97.3(a)(3)(K) to encourage the reporting of "test type" by healthcare providers.

The proposed amendments to §97.3(a)(4), add "diphtheria (*Corynebacteria diphtheria* from any site)," "salmonellosis, including typhoid fever (*Salmonella* species)," and "all *Streptococcus pneumoniae*, invasive, in children under five years old (*Streptococcus pneumoniae* from normally sterile sites)," to the list of "Diseases requiring submission of cultures."

The proposed amendments to §97.4(a)(1) and §97.4(a)(2) update the language to clarify when and how to report a condition or isolate. In addition, §97.4(a)(2) updates the reporting period for "mumps" from weekly to one day reporting, and "influenza-associated mortality" from one day to weekly reporting.

The proposed amendments to §97.4(a)(5) add language to cover possible electronic reporting including reporting by HIEs in response to amendments to HB 2641. Amendments allow electronic submission with restrictions for security, process requirements, and exceptions for conditions that must be reported immediately by phone and within one day.

#### FISCAL NOTE

Ms. Imelda Garcia, Director, Infectious Disease Prevention Section, has determined that for each year of the first five years that the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Garcia has also determined that there will be no adverse economic costs to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

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

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

#### PUBLIC BENEFIT

In addition, Ms. Garcia also has determined that for each year of the first five years the sections are in effect, the public will benefit from their adoption. These rules impact the people of Texas by decreasing the risk of illness through early detection and control or prevention of infectious diseases in the community.

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

## PUBLIC COMMENT

Comments on the proposal may be submitted to Nadia Bekka, Emerging and Acute Infectious Disease Branch, Infectious Disease Control Unit, Infectious Disease Prevention Section, Division for Disease Control and Prevention Services, Department of State Health Services, Mail Code 1960, P.O. Box 149347, Austin, Texas 78714-9347 or by email to Nadia.Bekka@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 rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

## STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §81.004, which authorizes rules necessary for the effective administration of the Communicable Disease Prevention and Control Act; §81.042, which requires a rule on the exclusion of children from schools; 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.

The amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 81 and 1001.

§97.3. *What Condition to Report and What Isolates to Report or Submit.*

(a) Humans.

(1) (No change.)

(2) Notifiable conditions or isolates.

(A) Confirmed and suspected human cases of the following diseases/infections are reportable: acquired immune deficiency syndrome (AIDS); amebiasis; amebic meningitis and encephalitis; anaplasmosis; ancylostomiasis; anthrax; arboviral infections including, but not limited to, those caused by California serogroup virus, chikungunya virus, dengue virus, Eastern equine encephalitis (EEE)

virus, St. Louis encephalitis (SLE) virus, Western equine encephalitis (WEE) virus, yellow fever virus, West Nile (WN) virus, and Zika virus; ascariasis; babesiosis; botulism, adult and infant; brucellosis; campylobacteriosis; carbapenem resistant *Enterobacteriaceae* (CRE); Chagas disease; chancroid; chickenpox (varicella); *Chlamydia trachomatis* infection; cryptosporidiosis; cyclosporiasis; diphtheria; echinococcosis; ehrlichiosis; fascioliasis; gonorrhea; *Haemophilus influenzae*, invasive; Hansen's disease (leprosy); hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis A, acute hepatitis B infection, hepatitis B acquired perinatally (child), any hepatitis B infection identified prenatally or at delivery (mother), acute hepatitis C infection, and acute hepatitis E infection; human immunodeficiency virus (HIV) infection; influenza-associated [pediatric] mortality; legionellosis; leishmaniasis; listeriosis; Lyme disease; malaria; measles (rubeola); meningococcal infection, invasive; multidrug-resistant *Acinetobacter* (MDR-A); mumps; novel coronavirus [causing severe acute respiratory disease]; novel influenza; paragonimiasis; pertussis; plague; poliomyelitis, acute paralytic; poliovirus infection, non-paralytic; prion diseases, such as Creutzfeldt-Jakob disease (CJD); Q fever; rabies; rubella (including congenital); salmonellosis, including typhoid fever; Shiga toxin-producing *Escherichia coli* infection; shigellosis; smallpox; spotted fever group rickettsioses (such as Rocky Mountain spotted fever); streptococcal disease: invasive group A, invasive group B, or invasive *Streptococcus pneumoniae*; syphilis; *Taenia solium* and undifferentiated *Taenia* infections, including cysticercosis; tetanus; trichinosis; trichuriasis; tuberculosis (*Mycobacterium tuberculosis* complex); tuberculosis infection; tularemia; typhus; vancomycin-intermediate *Staphylococcus aureus* (VISA); vancomycin-resistant *Staphylococcus aureus* (VRSA); *Vibrio* infection, including cholera (specify species); viral hemorrhagic fever; and yersiniosis.

(B) (No change.)

(3) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(A) (No change.)

(B) for tuberculosis disease - complete name, date of birth, physical address and county of residence, country of origin, information on which diagnosis was based or suspected. In addition, if known, radiographic or diagnostic imaging results and date(s); all information necessary to complete the most recent versions of department reporting forms: Report of Case and Patient Services, Report of Follow-up and Treatment for Contacts to TB Cases and Suspects; and Report of Verified Case of Tuberculosis [TB 400 A & B (Report of Case and Patient Services); TB 340 (Report of Contacts) and TB 341 (Continuation of Report of Contacts)]; laboratory results used to guide prescribing, monitoring or modifying antibiotic treatment regimens for tuberculosis to include, but not limited to, liver function studies, renal function studies, and serum drug levels; pathology reports related to diagnostic evaluations of tuberculosis; reports of imaging or radiographic studies; records of hospital or outpatient care to include, but not limited to, histories and physical examinations, discharge summaries and progress notes; records of medication administration to include, but not limited to, directly observed therapy (DOT) records, and drug toxicity and monitoring records; a listing of other patient medications to evaluate the potential for drug-drug interactions; and copies of court documents related to court ordered management of tuberculosis.

(C) for contacts to a known case of tuberculosis - complete name; date of birth; physical address; county of residence; evaluation and disposition; and all information necessary to complete the most recent versions of department reporting forms: Report of Follow-up and Treatment for Contacts to TB Cases and Suspects;

and Report of Case and Patient Services [TB 400 A & B (Report of Case and Patient Services); TB 340 (Report of Contacts); and TB 341 (Continuation of Report of Contacts)];

(D) for other persons identified with TB infection - complete name; date of birth; physical address and county of residence; country of origin; [and] diagnostic information; treatment information; medical and population risks; and all information necessary to complete the most recent versions of department reporting form: Report of Case and Patient Services.

(E) - (J) (No change.)

(K) for all other notifiable conditions listed in paragraph (2)(A) of this subsection - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, [and] specimen source, test type, and clinical indicators), date of onset, and physician name, address, and telephone number; and

(L) (No change.)

(4) Diseases requiring submission of cultures. For all anthrax (*Bacillus anthracis*); botulism, adult and infant (*Clostridium botulinum*); brucellosis (*Brucella* species); diphtheria (*Corynebacteria diphtheria* from any site); all *Haemophilus influenzae*, invasive, in children under five years old (*Haemophilus influenzae* from normally sterile sites); listeriosis (*Listeria monocytogenes*); meningococcal infection, invasive (*Neisseria meningitidis* from normally sterile sites or purpuric lesions); plague (*Yersinia pestis*); salmonellosis, including typhoid fever (*Salmonella* species); Shiga toxin-producing *Escherichia coli* infection (*E.coli* O157:H7, isolates or specimens from cases where Shiga toxin activity is demonstrated); *Staphylococcus aureus* with a vancomycin MIC greater than 2 µg/mL; all *Streptococcus pneumoniae*, invasive, in children under five years old (*Streptococcus pneumoniae* from normally sterile sites); tuberculosis (*Mycobacterium tuberculosis* complex); tularemia (*Francisella tularensis*); and vibriosis (*Vibrio* species) - pure cultures (or specimens as indicated in this paragraph) shall be submitted accompanied by a current department Specimen Submission Form.

(5) (No change.)

(b) (No change.)

#### §97.4. When and How to Report a Condition or Isolate.

(a) Humans.

(1) The following notifiable conditions are public health emergencies and suspect cases shall be reported immediately by phone to the local health authority or the appropriate Department of State Health Services regional epidemiology office [director of the Department of State Health Services (department)]: anthrax; botulism; diphtheria; measles (rubeola); meningococcal infection, invasive; novel coronavirus [causing severe acute respiratory disease]; novel influenza; poliomyelitis, acute paralytic; plague; rabies; smallpox; tularemia; vancomycin-intermediate *Staphylococcus aureus* (VISA); vancomycin-resistant *Staphylococcus aureus* (VRSA); viral hemorrhagic fever; yellow fever; and any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern. [Vancomycin-intermediate *Staphylococcus aureus* (VISA) and vancomycin-resistant *Staphylococcus aureus* (VRSA) shall be reported immediately by phone to the Emerging and Acute Infectious Disease Branch, Department of State Health Services, Austin, Texas at (888) 963-7111.]

(2) The following notifiable conditions shall be reported by fax or phone within one working day of identification as a suspected case: brucellosis; carbapenem resistant *Enterobacteriaceae* (CRE);

hepatitis A, acute; hepatitis B, perinatal infection; [influenza-associated pediatric mortality]; multidrug-resistant *Acinetobacter* (MDR-A) species; mumps; pertussis; poliovirus infection, non-paralytic; Q fever; rubella (including congenital); tuberculosis (*Mycobacterium tuberculosis* complex); and *Vibrio* infection (including cholera).

(3) - (4) (No change.)

(5) For all other notifiable conditions not listed in paragraphs (1) - (4) [~~(3)~~] of this subsection, reports of disease shall be made no later than one week after a case or suspected case is identified [~~including TB infection~~].

(A) Transmittal may be by telephone, fax, mail, courier, or electronic transmission.

(i) If by mail or courier, the reports shall be on a form provided by the department and placed in a sealed envelope addressed to the attention of the appropriate receiving source and marked "Confidential."

(ii) Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmittal, be by express written agreement with the receiving agency, utilize a format prescribed by the receiving agency, and be validated as accurate.

(B) A health information exchange (HIE) organization as defined by Health and Safety Code, §182.151, may transmit reports on behalf of providers required to report in §97.2(a) - (d) of this title (relating to Who Shall Report) in accordance with Health and Safety Code, Chapter 182, Subchapter D. Health Information Exchanges, and all other state and federal law as follows:

(i) The receiving agency has published message standards.

(ii) A method of secure transmission has been established between the HIE and the receiving agency and transmissions have been tested with the receiving agency and established as meeting the data exchange standards and conveying information accurately.

(iii) Reporting by the HIE has been requested and authorized by the appropriate health care provider, practitioner, physician, facility, clinical laboratory, or other person who is required to report health-related information.

(iv) HIE reports may be made in addition to but shall not replace reports listed in paragraphs (1) - (2) of this subsection.

(6) (No change.)

(b) (No change.)

#### §97.13. Death of a Person with Certain Communicable Diseases.

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

(c) Diseases that shall require tagging are acquired immune deficiency syndrome (AIDS); anthrax; brucellosis; cholera; Hantavirus pulmonary syndrome; hepatitis, viral; human immunodeficiency virus (HIV) infection; novel coronavirus [causing severe acute respiratory disease]; novel influenza; plague; prion diseases, such as Creutzfeldt-Jakob disease (CJD); Q fever; rabies; Rocky Mountain spotted fever; smallpox; syphilis; tuberculosis (*Mycobacterium tuberculosis* complex); tularemia; and viral hemorrhagic fever.

(d) (No change.)

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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



## CHAPTER 100. IMMUNIZATION REGISTRY

### 25 TAC §100.1, §100.11

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §100.1 and new §100.11, concerning the requirement to allow health information exchanges (HIEs) access to the immunization registry.

#### BACKGROUND AND PURPOSE

The purpose of the amendment is to implement House Bill (HB) 2641, 84th Legislation, Regular Session, 2015, which amended Health and Safety Code, Chapter 161, Subchapter B, Immunizations, and directed the department to allow the immunization registry to exchange data elements with a health information exchange (HIE) as defined in Health and Safety Code, §182.151.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §100.1 adds the definition of an HIE as defined in Health and Safety Code, §182.151.

The proposed new §100.11 will allow the immunization registry to exchange data elements with an HIE as defined in Health and Safety Code, §182.151. The proposed new rule will clarify procedures and requirements for the exchange of data between the immunization registry and HIEs. The new rule will stipulate that data access and transmittal will be subject to provisions of the department's data usage agreement and will state that access and transmittal of immunization registry data by an HIE must be made for immunization registry purposes only.

#### FISCAL NOTE

Imelda Garcia, Director, Infectious Disease Prevention Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Garcia has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. 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 sections as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Garcia has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be the following:

Health providers can increase their quality of care because HIEs provide another avenue through which they will be able to more readily access and transmit immunization data to and from the immunization registry. Adding another method for providers to add to and access information in the immunization registry will help decrease duplication, cost, and incidents of unnecessary re-vaccination, and make it easier for doctors and patients to find more complete vaccination information.

Public Health officials will have increased access to immunization data to quickly respond to vaccine preventable disease outbreaks.

Allowing the HIEs and the immunization registry to exchange immunization data facilitates consolidation of individual immunization records; the Centers for Disease Control and Prevention estimates that 20% of the children in the United States see more than one health care provider and have fragmented records.

Allowing the HIEs to exchange data with the immunization registry can help keep records accessible, up to date, and in a central location.

#### 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 Imelda Garcia, Department of State Health Services, Infectious Disease Prevention Section, Immunization Program, Mail Code 1946, P.O. Box 149347, Austin, Texas 78714-9347 or by email to [DSHSInfDisease@dshs.state.tx.us](mailto:DSHSInfDisease@dshs.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### STATUTORY AUTHORITY

The amendment and new rule are authorized by Health and Safety Code, Chapter 161 which provides the department with the authority to allow Health Information Exchanges access to the immunization registry; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Com-

mission 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.

The amendment and new rule affects Health and Safety Code, Chapter 161; Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

*§100.1. Definitions.*

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

(1) - (6) (No change.)

(7) Health information exchange--A health information exchange organization as defined by Health and Safety Code, §182.151.

(8) [(7)] Hostile Military or Paramilitary Act--An attack or other use of force by an armed force of a nation or an organized unofficial group, against forces, property and/or infrastructure of the United States, state or local government.

(9) [(8)] Immediate family member--The parent, spouse, child, or sibling of a person who resides in the same household as the person.

(10) [(9)] Immunization history--An accounting of all vaccines that a person has received, or evidence of immunity, and other identifying information.

(11) [(10)] Immunization record--A record containing the name and date of birth of the person to whom a vaccine was administered; dates of vaccine administration; types of vaccine administered; and name and address of the provider that administered the vaccines; or other evidence of immunity to a vaccine-preventable disease.

(12) [(11)] Immunization registry--The database or single repository that contains immunization histories, which include necessary personal data for identification. This database is confidential, and access to content is limited to authorized users.

(13) [(12)] Payor--An insurance company, a health maintenance organization, or another organization that pays a health care provider to provide health care benefits, including the administration of vaccines to a person younger than 18 years of age.

(14) [(13)] Potential disaster--An incident or event capable of causing widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, or other public calamity requiring emergency action, or energy emergency.

(15) [(14)] Provider--Any physician, health care professional, or facility personnel duly licensed or authorized to administer vaccines.

(16) [(15)] Public health emergency--An occurrence or imminent threat of an illness or health condition, caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agent or biological toxin, that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. Such illness or health condition includes, but is not limited to, an illness or health condition resulting from a natural disaster.

(17) [(16)] Terrorist attack--An activity that is dangerous to human life and/or potentially destructive of critical infrastructure or key resources and is intended to intimidate or coerce the civilian

population, or influence or affect the conduct of a government by mass destruction, assassination, and/or kidnapping.

(18) [(17)] User--An entity or individual authorized by the department to access immunization registry data.

(19) [(18)] Vaccine--Includes toxoids and other immunologic agents which are administered to a person to elicit an immune response (immunization) and thus protect against infectious diseases.

*§100.11. Authority of a Health Information Exchange.*

(a) Notwithstanding Health and Safety Code, §161.0073 and §161.008, and subject to the provisions of the department's data usage agreement, a health information exchange, as defined in Health and Safety Code, Chapter 182, may access and transmit health-related information under Health and Safety Code, §161.007(d), §161.00705(a), §161.00706(b), and §161.008(i), if the access or transmittal is:

(1) made for the purpose of assisting in the reporting of immunization registry information to the appropriate agency;

(2) requested and authorized by the appropriate health care provider, practitioner, physician, facility, or other person who is required to report data elements regarding an immunization record as outlined in Health and Safety Code, Chapter 182;

(3) made in accordance with the applicable consent requirements for the immunization registry under Health and Safety Code, Chapter 182; and

(4) made in accordance with the requirements of Health and Safety Code, Chapter 182 and all other state and federal law.

(b) A health information exchange may only use and disclose the information that it accesses or transmits under subsection (a) of this section in compliance with this chapter and all applicable state and federal law, and may not exchange, sell, trade, or otherwise make any prohibited use or disclosure of the information.

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 November 7, 2016.

TRD-201605738

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: December 18, 2016

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



CHAPTER 412. LOCAL MENTAL HEALTH  
AUTHORITY RESPONSIBILITIES  
SUBCHAPTER I. MENTAL HEALTH CASE  
MANAGEMENT

**25 TAC §412.403**

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §412.403, concerning mental health case management services.

BACKGROUND AND PURPOSE

The subchapter describes requirements for providing mental health case management services funded by or through the department. The purpose of amending this section is to update the following provisions to expand the definition of "provider" to include a Local Behavioral Health Authority (LBHA) and subcontractors of an LBHA. This will allow LBHAs to subcontract for general revenue-funded case management services, and allow for continuity of care between Managed Care Organizations (MCOs) and LBHA provider networks. Fee for Service Medicaid recipients will continue to receive case management services at community mental health centers in accordance with the Medicaid State Plan.

#### SECTION-BY-SECTION SUMMARY

The amendment to §412.403 revises and adds definitions that are used in the subchapter.

Section 412.403(25) is being added to include a definition for an "LBHA" that states "An entity designated as the local behavioral health authority in accordance with Texas Health and Safety Code, §533.0356."

Section 412.403(30) is being amended to provide clarification to expand the definition of "provider" to include an LBHA and the LBHA's subcontractors.

#### FISCAL NOTE

Lauren Lacefield Lewis, Deputy Associate Commissioner of Behavioral Health Services, has determined that for each year of 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 as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Lauren Lacefield Lewis has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the section as proposed. 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 with the section. 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 section as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Mrs. Lacefield Lewis has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The section of the public expected to benefit as a result of enforcing or administering the section will be clients served by community mental health centers that have a contract with the department to provide general revenue-funded mental health case management services, Medicaid-funded mental health case management services, or both; Local Behavioral Health Authorities (LBHA) that have a contract with the department to provide general revenue-funded mental health case management services; or a subcontractor of an LBHA.

Adoption of this rule change will also allow for greater continuity of care for clients in the Dallas area transitioning from a Behavioral Health Organization (BHO) model to an LBHA model. The

Sunset Commission's recommendations around the dismantling of NorthSTAR outline the importance of continuity of care for clients in this region during the transition, including continuity in service providers. Currently, clients are able to receive case management services from ten Specialty Provider Networks (SPNs). There are only three community mental health centers in the area. Therefore, not changing the rule would limit general revenue-funded clients to three options in the Dallas area, and would require that many clients change providers to continue receiving mental health case management services. Approving this rule change will maximize the ability for clients in this region to continue receiving services from their current provider and will be in compliance with the Sunset Commission's recommendations.

Additionally, with this rule change, there will be more overlap between MCO and LBHA provider networks in the area, allowing for more choice of providers by clients and better alignment between Medicaid and general revenue-funded provider networks.

#### 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 Rhyne Simon, Health and Human Services Commission, Mail Code 2012, 8317 Cross Park Drive, Austin, Texas 78754, or by email to rhyne.simon2@hhsc.state.tx.us with the phrase "MHCM: 412.403 (29) Informal Comments" in the subject line. 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, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; 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.

The amendment affects Government Code, Chapters 531 and 534; and Health and Safety Code, Chapter 1001.

§412.403. *Definitions.*

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

(1) - (24) (No change.)

(25) Local Behavioral Health Authority (LBHA)--An entity designated as the local behavioral health authority in accordance with Texas Health and Safety Code, §533.0356.

(26) [(25)] Medically necessary--A clinical determination made by an LPHA that services:

(A) are reasonable and necessary for the treatment of a mental health disorder or to improve, maintain, or prevent deterioration of functioning resulting from such a disorder;

(B) are provided in accordance with accepted standards of practice in behavioral health care;

(C) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(D) are at the most appropriate level or amount of service that can be safely provided; and

(E) could not have been omitted without adversely affecting the individual's mental and/or physical health or the quality of care rendered.

(27) [(26)] Mental health (MH) case management services--Activities that assist an individual in gaining and coordinating access to necessary care and services appropriate to the individual's needs. Case management activities include assessment, recovery planning, referral and linkage, and monitoring and follow up. Activities may be provided as routine case management or intensive case management.

(28) [(27)] Monitoring and follow-up--Activities and contacts that are necessary to ensure that referrals and linkages are effectively implemented and adequately addressing the needs of the individual. The activities and contacts may be with the individual, LAR, primary caregiver, family members, providers, or other people and entities to determine whether services are being furnished, the adequacy of those services, and changes in the needs or status of the individual.

(29) [(28)] Primary caregiver--A person 18 years of age or older who:

(A) has actual care, control, and possession of a child or adolescent; or

(B) has assumed responsibility for providing shelter and care for an adult.

(30) [(29)] Provider--An entity that is:

(A) a[A] community mental health center that has a contract with the department to provide general revenue-funded MH case management services, Medicaid-funded MH case management services, or both;

(B) a Local Behavioral Health Authority (LBHA) that has a contract with the department to provide general revenue-funded MH case management services, or a subcontractor of a LBHA

(31) [(30)] Qualified mental health professional-community services or QMHP-CS--A staff member who meets the definition

of a QMHP-CS set forth in Subchapter G of this chapter (relating to Mental Health Community Services Standards).

(32) [(31)] Recovery--A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(33) [(32)] Recovery plan or treatment plan--A written plan developed with the individual and, as required, the LAR and a QMHP-CS that specifies the individual's recovery goals, objectives, and strategies/interventions in conjunction with the uniform assessment that guides the recovery process and fosters resiliency as further described in §412.322(e) of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) concerning content and timeframe of treatment plan.

(34) [(33)] Recovery planning--A systematic process for ensuring the individual's active participation and allowing the LAR, and the primary caregiver and others to develop goals and identify a course of action to respond to the clinically assessed needs. The assessed needs may address medical, social, educational, and other services needed by the individual.

(35) [(34)] Referral and linkage--Activities that help link an individual with medical, social, and educational providers, and with other programs and services that are capable of providing needed services (e.g., referrals to providers for needed services and scheduling appointments).

(36) [(35)] Routine case management--Services that assist an individual in gaining and coordinating access to necessary care and services appropriate to the individual's needs. The standards for providing routine case management services are set forth in §412.407 of this title.

(37) [(36)] Site based--The location where routine case management services are usually provided (i.e., the case manager's place of business).

(38) [(37)] Staff member--Provider personnel, including a full-time and part-time employee, contractor, or intern, but excluding a volunteer.

(39) [(38)] Strengths based--The concept used in service delivery that identifies, builds on, and enhances the capabilities, knowledge, skills, and assets of the child, adolescent, LAR, or primary caregiver, and family, their community, and other team members. The focus is on increasing functional strengths and assets rather than on the elimination of deficits.

(40) [(39)] TAC--Texas Administrative Code.

(41) [(40)] Uniform assessment--An assessment adopted by the department that is used for recommending an appropriate level of care (LOC).

(42) [(41)] Utilization management guidelines--Guidelines developed by the department that establish the type, amount, and duration of MH case management services for each LOC.

(43) [(42)] Wraparound process planning or other department-approved model--A strengths-based course of action involving a child or an adolescent and family, including any additional people identified by the child or adolescent, LAR, primary caregiver, and family, that results in a unique set of community services and natural supports that are individualized for the child or adolescent to achieve a positive set of identified outcomes.

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 November 7, 2016.

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Lisa Hernandez

General Counsel

Department of State Health Services

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



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

##### SUBCHAPTER RR. VALUATION MANUAL

###### 28 TAC §3.9901, §3.9902

The Texas Department of Insurance proposes new 28 TAC Subchapter RR, consisting of §3.9901 and §3.9902, concerning the adoption of a valuation manual for reserving requirements. The new sections are necessary to implement the requirements of Insurance Code §425.073 and §425.077, enacted under SB 1654, 84th Legislature, Regular Session (2015), effective September 1, 2015.

EXPLANATION. The proposed sections are necessary to implement the requirements of Insurance Code §425.073, which requires the commissioner to adopt a valuation manual that is substantially similar to the valuation manual approved by the National Association of Insurance Commissioners (NAIC). The NAIC Valuation Manual may be viewed through the following link:

[http://www.naic.org/documents/committees\\_a\\_latf\\_related\\_valuation\\_manual\\_noapf\\_160829.pdf](http://www.naic.org/documents/committees_a_latf_related_valuation_manual_noapf_160829.pdf).

Section 425.073(b) requires that the commissioner adopt a manual with an operative date of January 1 of the first calendar year immediately following a year in which, on or before July 1, the commissioner determines that the valuation manual has been adopted by at least 42 members, or three-fourths of the voting members, of the NAIC; and that the states representing 75 percent of the direct written premiums have adopted the NAIC valuation manual or legislation with substantially similar terms and provisions. On June 29, 2016, the commissioner issued Commissioner's Order No. 4551, making the determination that the §425.073(b) requirements had been met on or before July 1, 2016, and establishing January 1, 2017, as the operative date of the valuation manual for Texas.

The NAIC Valuation Manual proposed to be adopted by the commissioner provides a new reserving method which more accurately identifies the risks or true cost of liability or obligations of the insurer. The proposed valuation manual provides the new reserving requirements and sets out a number of exemptions which allow companies to continue to use current reserving methods if they meet an exemption's requirements and standards. One of the primary exemptions is an optional three year transitional period exemption. If a company opts to use this exemption the company may continue to use current reserving requirements until January 1, 2020.

Currently, all companies must provide an actuarial opinion and memorandum supporting the current reserving methods. The proposed valuation manual also requires the actuarial opinion and memorandum. However, under the proposed new sections, if a company meets certain requirements, a company may apply to the commissioner for approval for an exemption from the asset adequacy analysis part of the actuarial opinion and memorandum.

The new sections also implement Insurance Code §425.077 which provides the commissioner with authority to exempt companies' specific product forms or product lines from the requirements of the proposed valuation manual if the company is licensed and only doing business in Texas. Section 425.077(2) provides rule making authority for the commissioner to address other requirements of the proposed valuation manual for these smaller companies.

FISCAL NOTE AND LOCAL EMPLOYMENTS IMPACT STATEMENT. Doug Slape, Deputy Commissioner, Financial Regulation Division, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Slape has also determined that for each year of the first five years the proposed new sections are in effect, the public benefit will be the adoption of a new reserving method to address complex insurance products, replacing a formulaic approach which needs to be frequently updated. The new reserving method more accurately identifies the risks or true cost of liability or obligations of the insurer. Insurance Code §425.073 sets out the requirements for companies to use the valuation manual and for the commissioner to adopt the valuation manual. There is no additional cost imposed by the proposed new section on subject entities.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), TDI has determined that the proposal will not have an adverse economic effect on small or micro businesses. Insurance Code §425.077 provides the commissioner with authority to grant exemptions for specific products or product lines of a domestic company if certain conditions are met. TDI cannot consider other regulatory methods because the requirement to adopt the valuation manual and the requirement to use the valuation manual reserving methods are set out in statute. Therefore, in accordance with Government Code §2006.002(c), TDI has determined that a regulatory flexibility analysis is not required.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI invites the public and affected persons to comment on this proposal. Submit your written comments on the proposal no later than 5:00 p.m., on December 19, 2016. Send written comments by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov). You must simultaneously submit an additional copy of the comment by mail to Doug Slape, Deputy

Commissioner, Financial Regulation Division, Mail Code 113-1F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to Doug Slape, fin-gm@tdi.texas.gov. You must submit any request for a public hearing separately to the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If a hearing is held, written comments and public testimony presented at the hearing will be considered.

STATUTORY AUTHORITY. TDI proposes the new subchapter and sections under Insurance Code §§425.073, 425.077, and 36.001.

Insurance Code §425.073 requires the commissioner to adopt a valuation manual that is substantially similar to the valuation manual approved by the NAIC.

Insurance Code §425.077 provides the commissioner with authority to allow an exemption to the valuation manual for specific products forms or product lines of a domestic company.

Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed new sections implement Insurance Code §475.073 and §425.077 and affect Insurance Code Chapter 1105.

§3.9901. Purpose and Operative Date.

(a) The purpose of this subchapter is to adopt by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, as required by Insurance Code §425.073, and to implement Insurance Code §425.077.

(b) The commissioner adopts by reference the NAIC Valuation Manual.

(c) The operative date of the NAIC Valuation Manual in Texas is January 1, 2017.

§3.9902. Single State Company Exemptions.

(a) Single state company. A single state company is a domestic company that is licensed and doing business only in this state. A domestic company is doing business only in this state if the company does not have direct or assumed risks for policies issued outside of this state.

(b) Single state exemption. The commissioner may grant a single state company a single state exemption from the NAIC Valuation Manual principle-based valuation requirements for specific product forms or product lines. This exemption is a single state exemption.

(1) To request approval for a single state exemption, a company must submit a written request to TDI and include detailed information regarding the request for the exemption. The request should identify the product forms or product lines proposed for the single state exemption. An exemption is not considered approved until written approval is issued by the commissioner or his designee.

(2) A single state company granted a single state exemption must compute reserves using the assumptions and methods that it used before January 1, 2017. Single state company business exempted by the commissioner with a single state exemption must be reserved with assumptions and methods required by the NAIC Valuation Manual other than the principle-based valuation requirements.

(3) A single state company granted a single state exemption must comply with all other requirements of the NAIC Valuation Man-

ual, including the actuarial opinion and memorandum requirements of the NAIC Valuation Manual.

(4) The commissioner may revoke a single state exemption by revoking the exemption in writing if the reserving methods and assumptions do not adequately reflect the company's risks or if the company no longer qualifies for the exemption under Insurance Code §425.077. A single state exemption may also be revoked if the commissioner determines that the NAIC Valuation Manual principle-based reserving would be more appropriate for protection of Texas policyholders and industry.

(c) Adequacy analysis requirement exemption. A single state company may be granted an exemption by the commissioner from the asset adequacy analysis requirement for the actuarial opinion in the NAIC Valuation Manual. This exemption is an asset adequacy analysis exemption.

(1) A single state company must request an asset adequacy analysis exemption in writing to the commissioner and provide support as to why an asset adequacy analysis is not needed for its business. An exemption is not considered approved until written approval is issued by the commissioner or his designee.

(2) A single state company granted an asset adequacy analysis exemption must comply with other requirements for the actuarial opinion in the NAIC Valuation Manual.

(3) The commissioner may revoke an asset adequacy analysis exemption by revoking the exemption in writing if the asset adequacy analysis is needed to assess risks or if it is needed for the protection of Texas policyholders and industry. The commissioner may also revoke an asset adequacy analysis exemption if the company no longer qualifies as a single state company.

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 November 2, 2016.

TRD-201605688

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 18, 2016

For further information, please call: (512) 676-6584

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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 5. TEXAS BOARD OF PARDONS AND PAROLES**

**CHAPTER 148. SEX OFFENDER CONDITIONS OF PAROLE OR MANDATORY SUPERVISION**

**37 TAC §§148.41 - 148.55**

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 148, concerning sex offender conditions of parole or mandatory supervision. The amendments are proposed to capitalize titles throughout the rules.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to clarify the procedures in the hearing process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to [bettie.wells@tdcj.texas.gov](mailto:bettie.wells@tdcj.texas.gov). Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §§508.036, 508.0441, 508.045, 508.141, 508.147, 508.228, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Sections 508.0441 and 508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.147 authorizes parole panels to determine the conditions of release to mandatory supervision. Section 508.228 authorizes a parole panel to impose sex offender conditions after a hearing for offenses where a sex offense occurred during the commission of the offense.

No other statutes, articles, or codes are affected by these amendments.

§148.41. *Public Hearings.*

(a) (No change.)

(b) Appropriate federal and state constitutional provisions, statutes, regulations, and judicial precedent establishing the confidential or privileged nature of information presented shall be given effect by the Hearing Officer [hearing officer].

(c) To effect this provision, the Hearing Officer [hearing officer] shall have the authority to close the hearing to the extent necessary to protect against the improper disclosure of confidential and/or privileged information.

§148.42. *Authority of Hearing Officers.*

(a) A Hearing Officer [hearing officer] shall have the following authority:

(1) - (6) (No change.)

(7) to issue on behalf of the Board [board] subpoenas and other documents authorized by and signed by a Board Member [board member] in accordance with statutory authority;

(8) - (11) (No change.)

(b) If a Hearing Officer [hearing officer] fails to complete an assigned case, another Hearing Officer [hearing officer] may complete the case without the necessity of duplicating any duty or function performed by the previous Hearing Officer [hearing officer].

§148.43. *Ex Parte Consultations.*

Unless required for the disposition of matters authorized by law, Hearing Officers, Board Members [hearing officers, board members] and Parole Commissioners [parole commissioners] assigned to render a decision in a matter may not communicate, directly or indirectly, in connection with any issue of fact or law with any party, except on notice and opportunity for all parties to participate.

§148.44. *Motions.*

Unless made during a hearing, motions shall be made in writing, set forth the relief or order sought, and shall be filed with the Hearing Officer [hearing officer] assigned to conduct the hearing. Motions based on matters which do not appear of record shall be supported by affidavit.

§148.45. *Witnesses.*

(a) The Hearing Officer [hearing officer] may determine whether a witness may be excused under the rule that excludes witnesses from the hearing.

(1) In no event shall the Hearing Officer [hearing officer] exclude from the hearing a party under the authority of this section. For these purposes, the term "party" means the definition in §141.111 of this title (relating to Definition of Terms) and includes:

(A) - (C) (No change.)

(2) In the event that it appears to the satisfaction of the Hearing Officer [hearing officer] that an individual who is present at the hearing and intended to be called by a party as a witness has no relevant, probative, noncumulative testimony to offer on any material issue of fact or law, then the Hearing Officer [hearing officer], in his sound discretion, may determine that such individual should not be placed under the rule and excluded from the hearing.

(b) All witnesses who testify in person are subject to cross-examination unless the Hearing Officer [hearing officer] specifically finds good cause for lack of confrontation and cross-examination.

(c) Witnesses personally served with a subpoena and who fail to appear at the hearing, and upon good cause determined by the Hearing Officer [hearing officer], may present testimony by written statement.

§148.46. *Opinion and Expert Testimony.*

All witnesses who are testifying in the form of an opinion or inference shall submit a written report to the other party and the Hearing Officer [hearing officer] in the manner prescribed by §148.47 of this title (relating to Evidence).

§148.47. *Evidence.*

(a) No later than five (5) days prior to the scheduled hearing, all parties shall submit all documents that will be introduced into evidence at the hearing to the other party and the Hearing Officer [hearing officer].

(b) All parties shall have an opportunity to present evidence in the form of testimony and written documentation. The Hearing Officer [hearing officer] shall determine the order of presentation of evidence.

(c) (No change.)

(d) The Hearing Officer [hearing officer] shall give effect to the rules of privilege recognized by law.

(e) Relevant testimony shall be confined to the subject of the pending matter. In the event any party at a hearing shall pursue a line of questioning that is, in the opinion of the Hearing Officer [hearing officer], irrelevant, incompetent, unduly repetitious, or immaterial, such questioning shall be terminated.

(f) - (g) (No change.)

(h) Objections may be made and shall be ruled upon by the Hearing Officer [hearing officer], and any objections and the rulings thereon shall be noted in the record.

§148.48. *Record.*

(a) The record in any case includes all pleadings, motions, and rulings; evidence received or considered; matters officially noticed; questions and offers of proof, objections, and rulings on them; all relevant TDCJ-PD documents, staff memoranda or reports submitted to or considered by the Hearing Officer [hearing officer] involved in making the decision; and any decision, opinion, or report by the Hearing Officer [hearing officer] presiding at the hearing.

(b) - (c) (No change.)

§148.49. *Decisions.*

(a) (No change.)

(b) The releasee or attorney shall be notified in writing and provided with a copy of the report of the Hearing Officer [hearing officer] and notice of the right to submit a petition to reopen the hearing.

§148.50. *Procedure after Waiver of Hearing.*

(a) The parole panel may accept a waiver of the hearing provided that a waiver of the hearing includes the following:

(1) information that releasee was served with written notice of the following:

(A) - (C) (No change.)

(D) notice that the releasee has the right to confront and cross-examine witnesses unless the parole panel or designee of the Board [board] specifically finds good cause is shown;

(E) - (F) (No change.)

(2) (No change.)

(b) After reviewing the waiver of the right to a sex offender condition hearing and receipt of supporting documentation of evidence of the releasee's sexual deviant behavior in the offense for which the releasee is currently on supervision, the parole panel or designee of the Board [board] must determine that, by a preponderance of the evidence, the releasee constitutes a threat to society by reason of his/her lack of sexual control. The parole panel shall make final disposition of the case by taking one of the following actions:

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

§148.51. *Scheduling of Hearing.*

Upon request, the Board [board] or the Board's [board's] scheduling staff shall schedule the hearing unless:

(1) (No change.)

(2) information has not been presented to the Board [board] or the Board's [board's] scheduling staff that the releasee was served with the following:

(A) - (C) (No change.)

(D) notice that the releasee has the right to confront and cross-examine witnesses unless the Hearing Officer [hearing officer] specifically finds good cause is shown;

(E) - (F) (No change.)

§148.52. *Hearing.*

(a) The parole panel or designee of the Board [board] shall conduct the hearing for the purpose of determining whether sex offender conditions may be imposed as a special condition of release.

(b) The parole panel or designee of the Board [board] must determine, as shown by a preponderance of the evidence, the releasee constitutes a threat to society by reason of his/her lack of sexual control.

(c) At the close of the hearing, or within a reasonable time thereafter, the parole panel or designee of the Board [board] shall collect, prepare and forward to the parole panel:

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

§148.53. *Final Board Disposition.*

(a) (No change.)

(b) The releasee or attorney shall be notified in writing of the Board's [board's] disposition and provided a copy of the summary report of the hearing and notice of the right to submit a petition to reopen the hearing.

§148.54. *Releasee's Motion to Reopen Hearing.*

(a) (No change.)

(b) A request to reopen the hearing submitted later than 30 days from the date of the parole panel's decision will not be considered unless under exceptional circumstances including but not limited to:

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

(c) Any such request for reopening made under this section must be in writing and delivered to the Board [board] or placed in the United States mail and addressed to the Texas Board of Pardons and Paroles, General Counsel, 8610 Shoal Creek Blvd., Austin, Texas 78757.

(d) On transmittal, a parole panel designated by the Chair [chair] other than the original parole panel shall dispose of the motion by:

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

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

§148.55. *Procedure after Motion to [Tø] Reopen Is Granted; Time; Rights of the Releasee; Final Disposition.*

(a) When the parole panel disposes of a releasee's motion to reopen under §148.54 of this title (relating to Releasee's Motion to Reopen Hearing) by granting said motion to reopen the hearing, the case shall be disposed of or referred to a parole panel or designee of the Board [board] for final disposition in accordance with this section and the previous disposition of the case made by the parole panel under §148.53 of this title (relating to Final Board Disposition) shall be set aside and shall be of no force and effect.

(b) The purpose of the further proceedings before the parole panel or designee of the Board [board] under this section shall be as specified by the parole panel in its order granting the releasee's motion to reopen pursuant to §148.54 of this title.

(c) When the parole panel or designee of the Board [board] convenes the reopening of the hearing, it shall have before it the entire record previously compiled in the case, including:

(1) the record, report, and decision of the hearing under §148.52 of this title (relating to Hearing) collected or prepared by the parole panel or designee of the Board [~~board~~] originally assigned to the case;

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

(4) any transmittal submitted to the parole panel with the recommendation from Board [~~board~~] staff. Any transmittal submitted to the parole panel by the General Counsel [~~general counsel~~] constitutes legal advice which is confidential under law, and shall not be released to the public as part of the hearing packet.

(d) At the conclusion of the proceedings before the parole panel or designee of the Board [~~board~~], or within a reasonable time thereafter, the parole panel shall make final disposition of the case by taking one of the following actions in any manner warranted by the evidence:

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

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

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For further information, please call: (512) 406-5388

