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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 73. STATUTORY DOCUMENTS

The Office of the Secretary of State proposes to revise Chapter 73, concerning statutory documents, by amending §§73.1, 73.2, 73.11, and 73.44 and repealing §73.43. The non-substantive changes are proposed to clarify the rules, update the mailing address for the Office of the Secretary of State, provide the secretary of state's website, and remove references to specific required forms by name.

FISCAL NOTE

Leigh A. Joseph, Attorney in the Business and Public Filings Division of the Office of the Secretary of State, 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 or administering the amendments and repeal as proposed.

PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Ms. Joseph has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections as proposed will be to view the rules as corrected. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

COMMENTS

Comments on the proposed amendments and repeal may be submitted in writing to: Leigh A. Joseph, Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697. Comments must be received not later than 12:00 noon, November 22, 2010.

SUBCHAPTER A. LABOR ORGANIZERS

1 TAC §73.1, §73.2

The amendments to §73.1 and §73.2 are proposed under the authority of §101.110, Texas Labor Code, which requires the secretary of state to accept applications for and issue labor organizer's cards and §2001.004(1) of the Government Code, which requires state agencies to adopt procedural rules of practice.

Chapter 101, Texas Labor Code, is affected by the proposed amendments to §73.1 and §73.2.

§73.1. Application.

(a) Prior to soliciting any members for a labor union organization, any labor union organizer operating in the State of Texas shall apply for [~~obtain~~] an organizer's card from the Statutory Documents Section of the Office of the Secretary of State.

(b) Texas Labor Code §101.110(b) sets forth the requirements for an application for an organizer's card, including that the application must be accompanied by a copy of the applicant's credentials. "Credentials" means either:

(1) a copy of the minutes of the union meeting showing the election of the applicant as labor union organizer; or

(2) if the labor organization is organized in a jurisdiction other than Texas, notification from the labor organization of the appointment of the applicant as labor union organizer.

§73.2. Application Form.

The application form is available on the secretary of state web site at www.sos.state.tx.us/statdoc/statforms.shtml or may be obtained by writing the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. See Form 2206. [~~The application for an organizer's card shall be on a form to be provided by the Office of the Secretary of State. The Statutory Documents Section of the Office of the Secretary of State hereby adopts by reference the following form, "Application for Labor Organizer Card." All persons required to file an application shall use this form. Copies may be obtained by contacting the Office of the Secretary of State, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005781
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 463-5562

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SUBCHAPTER B. SESSION LAWS

1 TAC §73.11

STATUTORY AUTHORITY

The amendment to §73.11 is proposed under the authority of §2158.064, Government Code, which requires the secretary of state to direct the compilation and printing of laws and resolu-

tions and §2001.004(1) of the Government Code, which requires state agencies to adopt procedural rules of practice.

Chapter 2158, Government Code, is affected by the proposed amendment to §73.11.

§73.11. Publication of Session Laws.

The session laws following the conclusion of a regular and/or special session shall be published. These volumes may be obtained from the publisher. The name and address of the publisher may be obtained by contacting the Statutory Documents Section of the Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550 [~~P.O. Box 12887, Austin, Texas 78711-2887~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

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Lorna Wassdorf
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Office of the Secretary of State
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For further information, please call: (512) 463-5562

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SUBCHAPTER D. STATEMENT OF OFFICER FORMS

1 TAC §73.43

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Office of the Secretary of State or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of §73.43 is proposed under the authority of Article XVI, §1, Texas Constitution, which requires certain officers to file signed anti-bribery statements with the secretary of state and §2001.004(1) of the Government Code, which requires state agencies to adopt procedural rules of practice.

Article XVI, §1, Texas Constitution, is affected by the proposed repeal of §73.43.

§73.43. Facsimile Transmission of a Statement of Officer Form.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
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For further information, please call: (512) 463-5562

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1 TAC §73.44

The amendment to §73.44 is proposed under the authority of Article XVI, §1, Texas Constitution, which requires certain officers to file signed anti-bribery statements with the secretary of state and §2001.004(1) of the Government Code, which requires state agencies to adopt procedural rules of practice.

Article XVI, §1, Texas Constitution, is affected by the proposed amendment to §73.44.

§73.44. Statement of Officer Form.

(a) A statement of officer form containing the language required by Article XVI, §1 of the Texas Constitution is available on the secretary of state web site at www.sos.state.tx.us/statdoc/statforms.shtml or may be obtained by writing the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. See Form 2201.

(b) A statement of officer must provide:

(1) the language required by Article XVI, §1(b) of the Texas Constitution;

(2) the specific office to which the officer has been elected or appointed; and

(3) the typed or printed name and signature of the officer.

(c) In addition to other accepted methods of delivery, the statement of officer may be submitted to the secretary of state by facsimile.

[~~(a) The Office of the Secretary of State hereby adopts by reference the statement of officer form. A sample copy of the form may be obtained from the Office of the Secretary of State, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887. A copy of the form is also available on the Secretary of State's Internet site.~~]

[~~(b) All persons required to file the statement shall use the form or a document which shall contain the following information: the constitutionally required language with the person's typed or printed name, the person's signature, the specific office elected or appointed to, and the city and county where the office is located.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

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Lorna Wassdorf
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Office of the Secretary of State
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 463-5562

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CHAPTER 81. ELECTIONS

SUBCHAPTER A. VOTER REGISTRATION

1 TAC §§81.11 - 81.17, 81.19 - 81.28

The Office of the Secretary of State (SOS) proposes amendments to §§81.11 - 81.17 and 81.19 - 81.28 concerning disbursement of funds under the Election Code, Chapter 19. These rules designate which goods and services are reimbursable with Chapter 19 funds and outline procedures to be followed by county voter registrars to obtain such reimbursement.

Sections 81.11, 81.12, 81.17, 81.19, 81.20, 81.22, and 81.25 - 81.28 organize, update, and clarify existing language but do not result in significant changes.

The following sections contain more substantive amendments:

- Section 81.13 requires that all Chapter 19 submissions include a certification that the Commissioners Court did not consider the availability of Chapter 19 funds in adopting the county budget for the office of voter registrar. In addition, the SOS will not require prior approvals unless the county requests a prior approval.

- Section 81.14 clarifies what constitutes "normal day-to-day operations" of the voter registrar's office. Equipment leases as well as repair and warranty of equipment funded with Chapter 19 funds are now eligible expenses. In addition, paper shredders are now an eligible expense to properly dispose of the source documents because of the increase in the scanning of voter registration documents.

- Section 81.15 extends the deadline to submit Chapter 19 funding requests from 30 days to six months from the county payment date to the vendor, except for travel reimbursement which remains 30 days from the completion of travel.

- Section 81.16 and §81.21 describe how supporting documentation does not need to be submitted at the time of the reimbursement requests but must be maintained at the county level for post-payment review based on a schedule established by the SOS.

- Section 81.23(a) and §81.24 clarify that travel as well as membership dues may be reimbursed at 100% if the purpose of the travel or the group or association benefits voter registration efforts. In addition, §81.23 has been amended to no longer allow for travel advances.

These rules take effect when the Chapter 19 electronic web-based application described in §81.16 is deployed for official county use, which is projected to be January 1, 2011.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering them.

Ms. McGeehan has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing them will be a better use of the Chapter 19 funds and a more efficient reimbursement processing procedure. There will be no effect on small businesses. There is no anticipated economic cost to the voter registrars.

Comments on these proposed rules may be submitted to the Office of the Secretary of State, Dan Glotzer, Elections Funds Management, P.O. Box 12060, Austin, Texas 78711. Comments must be received by SOS no later than 5:00 p.m. November 17, 2010.

The amendments are proposed under the Election Code, §31.003 and §19.002(b), which provides the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Election Code and other election laws, and in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code.

The Election Code, Chapter 19, §19.002(b) is affected by these proposed amendments.

§81.11. Definitions.

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

(1) Agency--The Office of the Secretary of State.

(2) Chapter 19--Texas Election Code Annotated, Chapter 19 (Vernon 2003 and Supplement 2004-2005).

(3) Chapter 19 funds--Funding available to a county voter registrar pursuant to Texas Election Code Annotated, §19.002 (Vernon 2003 and Supplement 2004-2005).

~~[(4) HAVA (Help America Vote Act) --42 U.S.C. §15301, Texas Election Code Annotated, §31.010, §19.004(d) (Vernon 2003).]~~

~~[(5) Mileage Guide--Electronic Official State Mileage Guide adopted by the Comptroller of Public Accounts.]~~

(4) [~~(6)~~] NVRA (National Voter Registration Act)--42 U.S.C. §1973 et seq., Texas Election Code Annotated, §19.004, §31.007 (Vernon 2003).

(5) [~~(7)~~] Rule--A rule adopted under Chapter 81 of the Texas Administrative Code, Title 1.

(6) [~~(8)~~] Section--A section of Texas Election Code Annotated (Vernon 2003 and Supplemental 2004-2005).

(7) State Fiscal Year--September 1 through August 31.

(8) Textravel--Guide issued by the Comptroller of Public Accounts providing information on state travel laws and rules to state agencies.

~~[(9) Travel Guide--State of Texas Travel Allowance Guide issued by the Comptroller of Public Accounts.]~~

§81.12. Applicable Sections of the Texas Election Code.

(a) Chapter 19 provides, in pertinent part, as follows:

(1) The Commissioners Court may not consider the availability of state funds under this chapter in adopting the county budget for the office of voter registrar (§19.006);

(2) State funds disbursed under this chapter may be used only to defray expenses of the voter registrar's office in connection with voter registration (§19.004).

(b) The Secretary of State has interpreted §19.006 to mean that the county must provide for the normal operation of the voter registrar's office as defined in §81.14 of this title (relating to Normal Day-To-Day Operation--Defined). The Secretary of State has interpreted §19.004 to mean that Chapter 19 funds shall be expended on items intended to be used exclusively for voter registration. If an item purchased or service rendered is not exclusively related to voter registration, the cost must be prorated.

§81.13. Allowable Uses of Chapter 19 Funds.

(a) Chapter 19 funds expenditures [~~which~~] must comply with the criteria of "reasonable and necessary[~~,~~]" as established by Uniform Grant Management Standards (UGMS)[~~,~~] and may only be used [~~to pay~~] for the following activities: [~~activity designed to~~]

(1) Increase [~~increase~~] the number of registered voters in the state.[~~,~~]

(2) Maintain [~~maintain~~] and report an accurate list of the number of registered voters.[~~, and/or~~]

(3) Increase [~~increase~~] the efficiency of the voter registration office through the use of technological equipment.

(b) All Chapter 19 funding requests submitted to the Agency must identify [state] which of these purposes the requested item(s) will benefit [further].

(c) All Chapter 19 requests must include a certification that the Commissioners Court did not consider the availability of Chapter 19 funds in adopting the county budget for the office of voter registrar.

(d) If there is a question regarding whether an item or service is payable from Chapter 19 funds, the Agency will review the eligibility prior to the purchase upon request by the county. [a written request should be submitted to the Agency detailing the estimated cost, projected payment date, purpose of item or service and how it relates to the aforesaid purposes. The Agency will respond to this request in writing within 14 business days.]

§81.14. Normal Day-To-Day Operation--Defined.

(a) Consistent with the intent of §81.12 of this title (relating to Applicable Sections of the Texas Election Code) Chapter 19 funds may not be used to fund the normal day-to-day operation of the voter registrar's office, which include statutory duties required by the Election Code and general office operating costs.

(b) The normal day-to-day operation of the voter registrar's office must be funded by the Commissioners Court when adopting the budget for voter registration in their county. ["Normal day-to-day operation" that must be funded by the county means any duty]

(1) Duties required to be performed by counties under the Texas Election Code[. Examples of such statutory duties] include[,] but are not limited to the following:[,]

(A) The [the] physical acceptance and processing of voter registration certificates and renewals under Chapter 13.[,]

(B) Notices [notices] and corrections made under Chapter 15 and Chapter 16. [and]

(C) The [the] processing and cost of supplying voter lists under §18.001. [Examples of specific items which]

(2) General office operating costs that are considered expenses incurred in the normal day-to-day operation of voter registrars' offices and not payable with Chapter 19 funds include[,] but are not limited to the following:[,]

(A) Office [office] furniture, including file cabinets.[,]

(B) Office [office] supplies.[, paper shredders, equipment leases,]

(C) Any [any] phone line not dedicated to a computer modem.[, the repair and warranty of office equipment,]

(D) Printing [printing] of voter registration cards.[, and]

(E) Normal [normal] postage costs.

(c) The Agency has the sole authority to determine whether a requested item or service is a day-to-day expense and thus not payable with Chapter 19 funds.

§81.15. Funding Period.

(a) After June 1 of each year funding becomes available to the counties as defined in §19.002 of the Election Code and remains available for 27 months, expiring on August 31.

(b) Except for travel reimbursement requests, Chapter 19 funding requests must be received within six (6) months [30 days] of payment to vendor.

(c) Travel expense reimbursement requests must be submitted within 30 days of the completion of travel. [Temporary employee funding requests may not cover longer than a four (4) consecutive week period.]

§81.16. Electronic Submission of Chapter 19 Purchase Request Required for Payment.

(a) The Agency shall prescribe an electronic web-based application format for the submission of Chapter 19 Purchase Request for use by each county voter registrar. [In addition to any supporting documentation required by this chapter, the voter registrar must submit a signed facsimile or signed scanned image of the supporting documentation via attachment to the electronic submission.]

(b) If a Chapter 19 Purchase Request is received by the Agency seeking funding which is not allowable under the Texas Election Code, Chapter 19, these rules, and Agency directives, the Agency shall so notify the voter registrar [within 14 business days] of receipt of such form via email, written notification or election response from the web-based system.

(c) All electronic requests must be submitted through the designated secured electronic web-based application designed solely for Chapter 19 purchases, located on the Office of the Secretary of State web site. [Facsimile supporting documentation received after 5:00 p.m. will be considered to be received on the next business day.]

(d) All supporting documentation must be maintained in accordance with §81.21 of this title (relating to the Records Maintenance and Payment Reviews).

§81.17. Competitive Bidding Required.

Except for the purchase of voter registration advertising[,] and temporary staff the voter registrar shall submit bids for the purchase of items or services to be paid for with Chapter 19 funds according to the following guidelines:

(1) No competitive bids for individual purchases of less than $5,000 [$2,000] are required. However, the voter registrar shall take the steps necessary to insure that all charges are reasonable and competitive relative to the local market. (Note: A large purchase may not be divided into small lot purchases to circumvent the dollar limits established by this section. For example, expenditures for computer equipment to a single vendor that total more than $5,000 [$2,000] are subject to the competitive bid requirement and may not be split between printers/scanner/computers.)

(2) For purchases of $5,000 or more, competitive bidding procedures must be followed. Generally, a county must receive a minimum of [Request for funding for individual purchases of $2,000 but less than $10,000 must be accompanied by] three written bids from three different vendors stating the vendor's name, complete mailing address, telephone number, and the amount of the bid. A copy of the bids as well as the selection documentation, including the solicitation and the scoring tools, must be maintained by the county and made available to the Agency upon request. [Copies of all bids received will be forwarded to the Agency as an attachment with the electronic submission. In instances when the specifications on the lowest bid are unacceptable, a signed letter by the voter registrar must accompany stating the reason specifications on the lowest bid does not meet your needs.]

(3) If a purchase is through the Texas Procurement and Support Services (TPASS) cooperative purchasing programs for state contract purchasing for the State of Texas, bids are not required. Proper documentations must be submitted to indicate the type of procurement service used and the source for those services.

[(3) Any request for funding for a purchase of $10,000 or greater must have received the prior written approval of the Agency. Upon receipt of such approval, the voter registrar will advertise for bids in the manner dictated by county regulations. Copies of all bids

received will be forwarded to the Agency as an attachment with the electronic submission.]

[(4) If a purchase is handled by a county's purchasing department, the voter registrar may use county purchasing guidelines instead of those set by paragraphs (1) and (2) of this section. However, a copy of the bids, if applicable per your county, a copy of the county guidelines and signed recommendation of the county purchasing department must be submitted with the Chapter 19 Purchase Request.]

(4) [(5)] Sole source vendor purchases and situations when the lowest bid is not accepted are discouraged. In rare instances when this type of purchase is required, a justification must be signed by the county purchasing authority and be made available to the Agency upon request. [a waiver request, stating a justification, must be submitted and signed by the voter registrar. If the item purchased is greater than $2,000, the waiver request must also be signed by the person responsible for county purchases. Only when a sole source vendor purchase or the acceptance of a bid higher than the lowest bid is required by county guidelines may such purchases be reimbursed with Chapter 19 funds and then, only upon receipt of the waiver request described herein above.]

§81.19. Method of Payment.

(a) All [Except for travel advances provided by §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized), all] payments made from Chapter 19 funds will be issued on a reimbursement basis. [An invoice from the vendor and a copy of the county paid voucher, ledger or bank statement must be submitted with all Chapter 19 Purchase Requests. The signed timesheet required by §81.22 of this title (relating to Use of Chapter 19 Funds for Temporary Employees) will be considered a "vendor's invoice" for purposes of this rule.]

(b) Payments issued by the Comptroller of Public Accounts will be payable to the county, in the form of direct deposit to a new or pre-existing bank account as directed by the voter registrar.

(1) If the county establishes a new account, the county must budget funds to cover all setup fees, check orders and/or service charges associated with opening and maintaining the new account. Chapter 19 funds will not incur any fees or service charges associated with the setting up of a new account. Please note: our office encourages the county to use an existing account and develop a separate fund. Whether a separate Chapter 19 fund is created in an existing account or a separate account is established, it will be the county's responsibility to maintain a separate bookkeeping system to identify the debits and credits relating to all activities from the receipt of Chapter 19 funds.

(2) The county voter registrar will use such account for the purpose of depositing and/or expending Chapter 19 funds.

(3) The voter registrar shall not commingle Chapter 19 fund ledger accounts with any other county fund ledger account. [The voter registrar shall complete fund reconciliations on a monthly basis. Fund general ledgers or activity statements must be provided to the Agency semiannually and are considered part of the Chapter 19 fund records and must be available if requested by the Office of the Secretary of State for audit purposes.]

(4) Except for travel expenses authorized by §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized), no cash payments may be made from Chapter 19 funds. All disbursement payments of Chapter 19 funds must be made by check or state transfer drawn on the Chapter 19 prescribed bank account as described above. [Please be advised, whether the accounts are combined with an existing account or separate accounts are established, it will be the county voter registrar's legal responsibility to maintain a separate bookkeeping system to identify the debits and credits relating to all activities from the receipt of Chapter 19 Funds.]

§81.20. Ownership of Equipment Purchased with Chapter 19 Funds.

(a) Items and equipment purchased with Chapter 19 funds are the property of the county.

(b) The county is responsible for the maintenance and repair of such items and equipment.

(c) If items or equipment that were originally purchased with Chapter 19 funds are no longer needed or useful for voter registration purposes, the items or equipment may be transferred, with the voter registrar's approval, to other county uses.

(d) If the items or equipment are no longer needed by the county, they may be disposed of in the manner set by county guidelines.

(e) Proceeds received from the sale of items or equipment purchased with Chapter 19 funds may be used only for voter registration purposes in a manner consistent with these rules.

§81.21. Records Maintenance and Payment Reviews [The Voter Registrar is Required to Print Semiannual Reports].

(a) All supporting documentation must be maintained at the county level and made available to the Agency upon request for three (3) state fiscal years after the fiscal year in which the funding lapses. [The County will be provided with reporting capabilities to access, process and print reports semiannually for each voter registrar and each county financial officer reflecting the activity and available balances in each county's Chapter 19 fund account. The voter registrar will promptly notify the Agency if discrepancies are noted between the records of the voter registrar and such semiannual report.]

(b) Supporting documentation that must be maintained by the county includes but is not limited to the following documents:

(1) Invoices from the vendor and a copy of the county paid voucher, ledger or bank statement substantiating the payment. The signed timesheet required by §81.22 of this title (relating to Use of Chapter 19 Funds for Temporary Employees) will be considered a "vendor's invoice" for purposes of this rule.

(2) All procurement documentation including the solicitation, bids, scoring documents, selection criteria, sole source or best value justification, if applicable, and any other relevant records.

(3) Any documents relating to Chapter 19 requests.

(c) The Agency will develop and notify the counties of the review schedule for Chapter 19 payments.

(1) The schedule will identify the periods of review, e.g., quarterly, semiannually, or annually.

(2) A risk assessment may be developed by the Agency to determine a sampling of counties subject to review.

(3) Corrections resulting from reviews will be assessed against subsequent Chapter 19 reimbursement(s).

§81.22. Use of Chapter 19 Funds for Temporary Employees.

The Commissioners Court must budget for the adequate staffing of the voter registrar's office. Chapter 19 funds may be used for temporary personnel when exigent circumstance arise beyond the staffing resources budgeted by the Commissioners Court. [In those instances when an unpredicted and unpredictable workload cannot be handled by the permanent voter registration staff, the Agency may approve, on a case-by-case basis, the use of Chapter 19 funds for the employment of temporary personnel in the voter registration office. In order to receive reimbursement through Chapter 19 funds for temporary staff, the

voter registrar must submit an electronic transmission of the Chapter 19 Request, with attached timesheet signed by both the temporary employee and his/her supervisor. A prior approved description of duties performed by the temporary employee(s) must be on file with the Office of the Secretary of State. These temporary personnel may be used only for special projects related to voter registration and not for the replacement of permanent full-time or part-time employees.]

(1) Permanent full-time and part-time county employees may not be compensated with Chapter 19 funds. The voter registrar may have Chapter 19 funded temporary staffing a maximum of any 39 [26] weeks out of the 52-week state fiscal year (September 1 through August 31). For example, if Employee A works one week and Employee B works the next week, the county is allowed only 37 [24] more weeks of Chapter 19 funded temporary personnel. However, if the county employs 15 temporaries in the same week, this would count as only one week of the 39 [26]-week allowance. For tracking purposes, working one day of one week counts the same as working an entire week. For example, if Employee C works Monday only, it will count as one week of the 39 [26]-week Chapter 19 allowance.

(2) The Agency does not issue tax forms to temporary employees funded with Chapter 19 funds. For this reason, the Agency recommends that temporary employment agencies be used if available.

(3) The voter registrar should discuss the tax implications of using temporary personnel with the county auditor.

(4) The fee or rate of pay to be paid to temporary employees must reflect the fee or rate prevailing in the locale for the same or similar services.

(5) Work related injuries to temporary personnel hired with Chapter 19 funds are not the liability of the Agency.

§81.23. Travel Using Chapter 19 Funds Authorized.

(a) Chapter 19 funds may be used to pay travel expenses incurred by the voter registrar and full-time permanent voter registration staffers to attend voter registration and/or election administration seminars and demonstrations that directly advance voter registration efforts. [Chapter 19 funds cannot be used to reimburse fully a trip by the voter registrar, unless the purpose of the trip is exclusively related to voter registration. If a voter registrar wishes to travel to a seminar or meeting in which voter registration is not the only topic, the Agency will determine the appropriate portion of the trip expenses that are reimbursable pursuant to Chapter 19 and reimburse the registrar accordingly.]

(b) All voter registrars who seek reimbursement from Chapter 19 funds should plan their travel to achieve maximum economy and efficient means of transportation. [Hotel shuttles are preferred over taxies and taxies are preferred over rental cars. A comparison should be made between different modes of travel for the lowest and most economical option. All trips which include reimbursable travel must receive prior written approval from the Agency. An electronic travel request through the web-based application must state the purpose of the trip, itinerary, mode of transportation, and estimated expenses. A Chapter 19 Electronic Travel Request, prescribed by the Agency and Chapter 19 Purchase Request must be submitted for each traveler within 30 days of the completion of travel. Travel reimbursement requests must include attached receipts for airfare, rental cars, lodging, seminar registration fees, and miscellaneous expenses. Chapter 19 funds will not cover expenses for first class accommodations, tips, valet parking or alcohol. Travel advances will be approved, on a case-by-case basis. Travel advance funding will not be made for meals, hotel taxes or miscellaneous expenses. Travel advance requests must be submitted through the web-based application in the form of a travel request and include a Chapter 19 Purchase Request for each traveler. No further Chapter 19 Purchase Request will be processed until the final accounting of any advanced travel is received.]

(c) The following limitations apply to Chapter 19 travel:

(1) The lowest available rates and fares shall be utilized.

(2) Reimbursements will be made based on actual costs.

(3) Lodging, per diem, and mileage rates may not exceed those set by the Texas Comptroller of Public Accounts.

(4) Reimbursements for lodging, per diem (including partial per diem), and mileage rates may not be charged to Chapter 19 unless the employee conducts travel beyond 25 miles of his or her designated headquarters.

(5) Travel by personal car is reimbursable at the rate set by the Texas Comptroller of Public Accounts per mile with mileage computed using the originating county seat as the departure point and computing final mileage using the mapping tool on the Chapter 19 web-based application.

(6) If more than one person is traveling from the same headquarters to the same destination, the travelers are to ride together in a single automobile if practicable.

(7) The rental of luxury cars will be disallowed, except in special circumstances requiring the use of large cars, i.e., several employees are traveling together or large volumes of equipment or supplies are being transported.

(8) Chapter 19 funds will not cover expenses for first class accommodations, tips, gratuities, valet parking or alcoholic beverages.

(d) Chapter 19 travel reimbursements must be submitted for each traveler within 30 days of the completion of travel via the Chapter 19 web-based application.

(e) Travel reimbursement requests must include the itemized amounts for airfare, rental cars, mileage, meals, lodging, seminar registration fees, and miscellaneous expenses. All receipts must be maintained in accordance with §81.21 of this title (relating to Records Maintenance and Payment Reviews).

[(c) Chapter 19 travelers must obtain the lowest cost airfare. Under no circumstances will the amount of a first class ticket be paid with Chapter 19 funds. Voter registrars are to share rental cars whenever practicable. The Agency must give prior approval for the use of a rental car and the voter registrar must make a proper deduction or reimbursement whenever there is personal use of a rental car. The rental of luxury cars will be disallowed, except in special circumstances requiring the use of large cars, i.e., several employees traveling together. Travel by personal car is reimbursable at the rate set in the State of Texas Travel Allowance Guide (the "Guide") per mile with mileage computed using the originating county seat as the departure point and computing final mileage using the Official State Mileage Guide. Travel by personal car is reimbursable as long as it is less than airfare to the same destination. If more than one person is traveling to the same destination by personally owned automobile, the travelers are to ride together in a single automobile if practicable. Overnight lodging is not covered if destination is less than 70 to 100 miles. Rental cars are not an allowable expense when flying to destination city and staying at the host hotel. Note: County procedures will supersede Chapter 19 rules regarding travel advances.]

[(d) Voter registrars who seek reimbursement from Chapter 19 funds for a trip with a final destination within Texas will receive the actual cost of lodging and meals, but such rates may not exceed the rates set by the Guide. Voter registrars who seek reimbursement from Chapter 19 funds for a trip with a final destination outside Texas will receive

~~the actual cost of lodging and meals not to exceed the out-of-state meals and lodging rates set by the Comptroller of Public Accounts for that location. The out-of-state rate for a city is available from the Comptroller of Public Accounts or the Agency. The voter registrar must be away from his or her home county for at least six consecutive hours to qualify for the partial per diem allowed by the Guide. When requesting Chapter 19 reimbursement, the voter registrar must submit receipts for lodging, airfare, and miscellaneous expenses with the electronic submission of the Chapter 19 Purchase and Travel Request. Amounts in excess of the maximum amounts allowed by the Travel Guide will not be reimbursed. A Meal Itemization Worksheet, prescribed by the Agency, must be entered showing actual costs of meals and signed by each traveler requesting reimbursement as an attachment to your electronic submission. Receipts for such meal costs are not required to be attached, but should be retained by the traveler in the event of a state audit. Texas Government Code, §2113.101, prohibits reimbursement for the purchase of alcoholic beverages, gratuities, and tips.]~~

§81.24. Membership Dues Detailed.

Membership dues to groups or associations are payable with Chapter 19 funds only if the group's or association's activities or mission directly involve voter registration. [~~voter registration and/or election administration is the purpose of the group or association.~~]

§81.25. Voter Registration Drives Encouraged.

(a) Pursuant to §81.12 of this title (relating to Applicable Sections of the Texas Election Code), efforts to increase the number of registered voters in the county are payable with Chapter 19 funds.

(b) Voter registration drive efforts include[~~,~~] but are not limited to[~~,~~] mailouts of applications to households, insertion of applications into newspapers, distributing applications at public locations, and other forms of advertising.

(c) "Promotional items" are not payable with Chapter 19 funds. Examples of non-payable promotional items include[~~,~~] but are not limited to memorabilia, models, gifts, souvenirs[~~, hats, drink coolers, t-shirts, weepuls, pens, pencils, jackets, frisbees, emery boards, fans, dominoes, windshield shades, change purses~~], and other such novelties or items of nominal value. Items purchased with Chapter 19 funds may include only the county and title of the voter registrar's office.

(d) Names of specific individuals may not be included on such materials. Chapter 19 funded voter registration drives must not promote a particular party, candidate, or issue. Chapter 19 funds may not be used for food and drink purchases, except for travel expenses allowed under §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized).

§81.26. Technology Purchases Encouraged.

(a) Chapter 19 funds may be used for the purchase and initial installation of technological improvements for the voter registration office.

(b) "Technological improvements" include[~~,~~] but are not limited to[~~,~~] computer hardware, printers, and computer training. Computer programs and software that are necessary for the operation of the voter registration office are payable with Chapter 19 funds. [~~However, as stated in~~]

(c) Pursuant to §81.22 of this title (relating to Chapter 19 Funds for Temporary Employees), the county may not be reimbursed for the compensation of full or part-time county employees and programmers.

(d) The cost of providing the information required by §18.063 of the Texas Election Code is specifically payable with Chapter 19 funds.

(e) Pursuant to §81.20 of this title (relating to Ownership of Equipment Purchased with Chapter 19 Funds), the upkeep and maintenance of items purchased with Chapter 19 funds is the responsibility of the county.

(f) Pursuant to §81.12 of this title (relating to Applicable Sections of the Texas Election Code), the voter registrar must prorate the cost between the county and Chapter 19 funds, if the purchased item is not entirely related to voter registration.

§81.27. Electronic Office Equipment Purchases Encouraged.

(a) Chapter 19 funds may be used for the purchase of electronic office equipment.

(1) Examples of "electronic office equipment" include[~~,~~] but are not limited to[~~,~~] copiers, fax machines, optical imaging systems, electronic retriever file systems and typewriters.

(2) Examples of office equipment that are considered general voter registration office operating expenses and not payable with Chapter 19 funds pursuant to §81.14 of this title (relating to Normal Day-To-Day Operation--Defined) include but are not limited to office furniture such as desks, chairs and file cabinets. [~~Office furniture is required for the normal day-to-day operation of the voter registrar's office, and accordingly, is not payable with Chapter 19 funds. Examples of such office furniture include, but are not limited to, desks, chairs and file cabinets.~~]

(b) Pursuant to §81.20 of this title (relating to Ownership of Equipment Purchased with Chapter 19 Funds), the upkeep and maintenance of items purchased with Chapter 19 funds is the responsibility of the county.

(c) Pursuant to §81.12 of this title (relating to Applicable Sections of the Texas Election Code), the voter registrar must prorate the cost between the county and Chapter 19 funds if the purchased item is not entirely related to voter registration.

§81.28. NVRA--Expenses Payable.

The NVRA amends the Texas Election Code, §19.004, to allow expenses incurred by the voter registrar in implementing and conducting the duties required by this act to be payable with Chapter 19 funds. Examples of payable expenses under the NVRA include[~~,~~] but are not limited to[~~,~~] computer programming changes required by §15.081 and the printing and mailing of confirmation notices required by §§13.146, 14.023, 16.0921.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-201005780
John Sepehri
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 463-5650

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 34. OUT-OF-STATE SERVICES

1 TAC §354.1440, §354.1442

The Texas Health and Human Services Commission (HHSC) proposes two new rules in new Division 34, Out-of-State Services, within Title 1, Part 15, Chapter 354, Subchapter A. HHSC proposes new §354.1440, concerning Medical Care or Services Provided to Medicaid Recipients Outside of Texas, and new §354.1442, concerning Out-of-State Provider Eligibility.

Background and Justification

HHSC proposes new §354.1440 related to medical care or services provided to eligible Texas Medicaid recipients while absent from Texas. Currently, this information is located in Title 1, Part 15, Chapter 355, Subchapter J, Division 5, §355.8083. However, Chapter 355 covers Medicaid reimbursement rather than program policy. HHSC is proposing to repeal §355.8083 concurrently with this proposal and move the information to new §354.1440.

In addition, HHSC proposes new §354.1442, which defines the criteria that must be met by a provider located outside the Texas border to enroll in the Texas Medicaid program and provide services to Texas Medicaid recipients within the state of Texas or while they are absent from Texas. The addition of this new rule is consistent with the current policy and procedures the state uses when determining if an out-of-state provider meets the criteria for enrollment in the Texas Medicaid program. The new rule will refer to Chapter 355 regarding the reimbursement rates paid to out-of-state providers.

The repeal of the existing rule and addition of the new rules are designed to strengthen the Medicaid rules regarding services provided to eligible Texas Medicaid recipients by out-of-state providers.

Section-by-Section Summary

Section 354.1440 - Medical Care or Services Provided to Medicaid Recipients Outside of Texas

Proposed §354.1440 describes coverage of medical care and services provided outside of Texas for recipients in the Texas Medicaid program.

Proposed subsection (a) describes the criteria under which services provided to an eligible Texas recipient outside Texas may be covered.

Proposed subsection (b) specifies that prior authorization must be obtained for services furnished outside of Texas before the services are rendered unless one of the criteria described in subsection (a) is met.

Proposed subsection (c) indicates that HHSC or its designee will determine the basis and amount of reimbursement for Medicaid services provided outside Texas and within the United States in accordance with Chapter 355.

Section 354.1442 - Out-of-State Provider Enrollment

Proposed §354.1442 sets out the definition of an out-of-state provider and the requirements for an out-of-state provider that seeks to enroll in the Texas Medicaid program.

Proposed subsection (a) defines an out-of-state provider. A provider is considered an out-of-state provider if: (1) the physical address where services are rendered is located outside Texas and within the United States; (2) the physical address where services or products originate is located outside Texas and within the United States when providing services or products to the recipient in Texas; or (3) the physical address where services are rendered is located in Texas, but the provider maintains patient records, billing records, or both only outside Texas, and the provider is unable to produce those records from the Texas location.

Proposed subsection (b) indicates that out-of-state providers defined under subsection (a) are ineligible to participate in Texas Medicaid unless they meet one of the criteria listed in paragraphs (1) - (7). For providers who meet one of the criteria, enrollment is time-limited for an appropriate period as determined by HHSC or its designee.

Proposed subsection (c) specifies that providers must include documentation to support that they meet one or more of the criteria in subsection (b).

Proposed subsection (d) indicates that the provider must meet all applicable enrollment eligibility requirements, including those specified in Chapter 371 (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity).

Proposed subsection (e)(1) indicates that providers who are enrolled pursuant to subsections (b), (c), and (d) must follow all other applicable program participation requirements identified by HHSC or its designee for each service provided, including, but not limited to, documentation procedures, obtaining prior authorization, and claims filing deadlines.

Proposed subsection (e)(2) sets out certain out-of-state providers that are not extended the 365-day claims filing deadline described in §354.1003(a)(5)(H). Those providers must file claims within the same deadlines as in-state providers under §354.1003.

Proposed subsection (f) specifies that out-of-state providers enrolled pursuant to subsections (b), (c), and (d) must comply with the terms of the Medicaid provider agreement; provide services in compliance with all applicable federal, state, and local laws and regulations related to licensure and certification in the state where the out-of-state provider is located; and comply with all state and federal laws and regulations related to Medicaid.

Proposed subsection (g) indicates that HHSC or its designee will determine the basis and amount of reimbursement for medical services provided outside Texas in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the proposed new rules are in effect, there will be no fiscal impact to state government. The proposed new rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be an effect on small businesses or micro businesses to comply with the proposed new rules as they will be required to alter their business practices as a result of the rules. There are anticipated economic costs to persons who are required to comply with the rules. There is no anticipated negative impact on local employment.

Currently, providers located 200 miles or less from the Texas border who are enrolled in Texas Medicaid are considered border-state providers and follow the same rules and guidelines as in-state providers regarding claims filing deadlines and period of enrollment. However, under the proposed new rules, only providers located 50 miles or less from the Texas border would be considered border-state providers. Therefore, providers located 51 to 200 miles from the Texas border may be affected by these proposed new rules. Those providers may be subject to different claims filing deadlines and a more limited enrollment period.

Once the rules become effective, all enrolled providers located 51 to 200 miles from the Texas border will be notified of the criteria they will have to meet as out-of-state providers. These providers will be required to submit documentation supporting that they meet one or more of the out-of-state provider criteria in the new rule. Providers who do not meet the criteria or who do not respond and provide supporting documentation will be disenrolled.

Small or micro-businesses may be impacted if they are currently enrolled in Texas Medicaid, are located 51 to 200 miles from the Texas border, and do not meet one of the criteria in the rule. These providers will be impacted because they will be disenrolled.

The current rule does not specify the distance from the Texas border that providers located outside Texas can be located in order to be considered border-state providers. A policy was implemented in June 1989 that allowed for out-of-state inpatient hospitals located 200 miles or less from the Texas border to be considered border-state providers. After that time, the 200-mile limit was applied to all types of providers.

Three options were considered to clearly specify which providers are considered border-state providers:

1. HHSC could continue the current policy of considering providers located 200 miles outside the Texas border as border-state providers. Providers located 201 miles or more from the border could enroll only if they meet one of the other criteria defined in the new rule.

2. The rule could be changed to prevent any providers located outside the Texas border from being considered border-state providers. Any providers located outside the Texas border would have to meet one of the other criteria defined in the new rule.

3. The 200-mile limit could be reduced to 100 miles. Therefore, providers located 100 miles or less from the Texas border would be considered border-state providers, and providers located 101 miles or more from the border could enroll only if they meet one of the other criteria defined in the new rule.

Medicaid programs in other states and the Texas Medicaid Children with Special Health Care Needs program consider providers located 50 miles or less from the border as border-state providers. Also, it is unlikely that Texas Medicaid recipients would ordinarily use medical resources across the state border as a "customary or general practice" when their travel distance exceeds 50 miles. Therefore, staff developed this rule to allow providers located outside the Texas border but with a physical address located 50 miles or less from the Texas border to be considered border-state providers. Providers located 51 miles or more from the Texas border may enroll only if they meet one of the other criteria defined in the new rule.

Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the proposed new rules is the rules will align with current practice that is being utilized to enroll out-of-state providers who meet one of the criteria defined in the rules, including providers located 50 miles or less from the Texas border. Additionally, the proposed new rules will ensure that the HHSC Office of Inspector General has access to more provider records for purposes of investigating claims of fraud, waste, and abuse.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Ryan Keyser, Senior Policy Analyst in the Medicaid/CHIP Division, 12365A Riata Trace Pkwy (Bldg 9), Austin, TX 78727; by fax to (512) 249-3707; or by e-mail to ryan.keyser@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for November 4, 2010 from 11:00 a.m. to 12:00 p.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

Statutory Authority

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

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

§354.1440. Medical Care or Services Provided to Medicaid Recipients Outside of Texas.

(a) Subject to certain conditions, limitations, and exclusions, the Texas Medicaid program covers medical assistance services provided to an eligible Texas recipient while away from Texas in another state if the recipient does not leave Texas for the purpose of receiving out-of-state medical care that the recipient can receive in Texas. Services provided outside of Texas but within the United States are covered to the same extent they are covered in Texas when:

(1) the medical services are needed because of a medical emergency documented by the attending physician or other provider;

(2) the services are medically necessary, and, in the opinion of the attending physician or other provider, the recipient's health would be endangered if the recipient were required to travel to Texas;

(3) HHSC or its designee determines that the medically necessary services are more readily available in the state where the recipient is located;

(4) the customary or general practice for recipients in a particular locality within Texas is to use medical resources in the other state; or

(5) the Texas Department of Family and Protective Services makes Title IV-E adoption assistance or Title IV-E foster care maintenance payments to an out-of-state provider for a child who is also eligible for Texas medical assistance benefits.

(b) Except as provided in subsection (a) of this section or otherwise specified by the Texas Health and Human Services Commission (HHSC) or its designee, the Texas Medicaid program does not pay for medical care and services furnished outside Texas unless prior authorization is obtained from HHSC or its designee. Prior authorization is required for utilization control and to ensure the appropriate use of medical resources. Prior authorization may be obtained by submitting medical justification or documentation to HHSC or its designee indicating the reason the recipient must obtain medical care outside Texas. Prior authorization must be obtained before providing the medical care or service.

(c) HHSC or its designee determines the basis and amount of reimbursement for medical services provided outside Texas but within the United States in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

§354.1442. Out-of-State Provider Eligibility.

(a) A provider is considered an out-of-state provider when:

(1) the physical address where services are rendered is located outside the Texas state border and within the United States;

(2) the physical address where the services or products originate is located outside the Texas state border and within the United States when providing services or products to the Medicaid recipient in the state of Texas, e.g. durable medical equipment and supplies; or

(3) the physical address where services are rendered is located within the state of Texas, but the provider maintains patient records, billing records, or both only outside the Texas state border and the provider is unable to produce the originals or exact copies of the patient records, billing records, or both from the location within the state of Texas where services are rendered.

(b) Providers that are considered out-of-state under subsection (a) of this section are ineligible to participate in the Texas Medicaid program unless the Texas Health and Human Services Commission (HHSC) or its designee approves the provider for enrollment on the basis of a determination that the provider has provided, is providing, or will provide services under one or more of the following criteria:

(1) The services are medically necessary emergency services to a recipient who is located outside of the state, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee, not to exceed one year;

(2) The services are medically necessary services to a recipient who is located outside of the state, and in the expert opinion of the recipient's attending physician or other provider, the recipient's health would be or would have been endangered if the recipient were required to travel to Texas, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee, not to exceed one year;

(3) The services are medically necessary services that are more readily available to a recipient in the state where the recipient is located, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee;

(4) The services are medically necessary services to a recipient who is eligible on the basis of participation in an adoption assistance or foster care program administered by the Texas Department of Family and Protective Services under Title IV-E of the Social Security Act, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee;

(5) The services are medically necessary services that were prior authorized by HHSC or its designee, and documented medical justification indicating the reasons the recipient must obtain medical care outside Texas is furnished to HHSC or its designee before providing the services and before payment, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee;

(6) The services are medically necessary services and it is the customary or general practice of recipients in a particular locality within Texas to obtain services from the out-of-state provider, as demonstrated by the provider being located in the United States and within 50 miles driving distance from the Texas state border, or as otherwise demonstrated on a case-by-case basis, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee; or

(7) The services are medically necessary services to one or more dually eligible recipients (i.e., recipients who are enrolled in both Medicare and the Texas Medicaid program) and the out-of-state provider may be considered for reimbursement of co-payments, deductibles, and co-insurance, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee, and the enrollment will be restricted to receiving reimbursement only for the Medicaid-covered portion of Medicare crossover claims.

(c) An out-of-state provider that applies for enrollment in Texas Medicaid must submit documentation along with the application to demonstrate that the provider meets one or more of the criteria in subsection (b) of this section. The provider must submit any additional requested information to HHSC or its designee before enrollment may be approved. An out-of-state provider does not meet the criterion in subsection (b)(6) of this section merely on the basis of having established business relationships with one or more providers that participate in the Texas Medicaid program, because the criterion in that paragraph applies only to the customary or general practice of recipients in regard to a recipient's choice of provider.

(d) When HHSC or its designee determines that an out-of-state provider meets one or more of the criteria in subsection (b) of this

section, the provider must meet all other applicable enrollment eligibility requirements, including those specified in §§371.33, 371.1681, 371.1683, 371.1685 and 371.1687 of this title (relating to On-Site Reviews of Prospective Providers, Provider Enrollment, Criminal History Checks, Use of Criminal History Record Information and Administrative Review of Rejection of Provider Enrollment by Reason of Criminal History) before enrollment may be approved.

(e) Other applicable requirements.

(1) An out-of-state provider that is enrolled pursuant to subsections (b), (c), and (d) of this section must follow all other applicable Texas Medicaid participation requirements identified by HHSC or its designee for each service provided. Other applicable requirements that must be followed include, but are not limited to, service benefits and limitations, documentation procedures, obtaining prior authorization for the service whenever required, and claims filing deadlines as specified in §354.1003 of this title (relating to Time Limits for Submitted Claims).

(2) Certain out-of-state providers are not entitled to utilize the extended 365-day claim filing deadline provided in §354.1003(a)(5)(H) of this title that is otherwise available to out-of-state providers, and must comply with the same claims filing deadlines that apply to in-state providers under that section. Those out-of-state providers are:

(A) Providers that are approved for enrollment under the criterion specified in subsection (b)(6) of this section, where the specific basis for approval is that the provider is located within 50 miles driving distance from the Texas state border; and

(B) Providers that are approved for enrollment under the criterion specified in subsection (b)(7) of this section regarding dually eligible recipients.

(f) An out-of-state provider that is enrolled pursuant to subsections (b), (c), and (d) of this section must:

(1) comply with the terms of the Texas Medical Assistance Program Provider Agreement;

(2) provide services in compliance with all applicable federal, state, and local laws and regulations related to licensure and certification in the state where the out-of-state provider is located; and

(3) comply with all state and federal laws and regulations relating to the Texas Medicaid program.

(g) HHSC or its designee determines the basis and amount of reimbursement for medical services provided outside Texas and within the United States in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2010.

TRD-201005736
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.508

The Health and Human Services Commission (HHSC) proposes to amend §355.508, concerning Reimbursement Methodology for Transition Assistance Services.

Background and Justification

The Department of State Health Services (DSHS) developed the Youth Empowerment Services (YES) waiver to provide intensive, community-based services to children and youth who meet the criteria for inpatient psychiatric hospitalization. The waiver implemented a pilot program to provide certain services to children and adolescents in Bexar and Travis counties.

Transition Assistance Services, known as Transitional Services in the YES wavier, are a covered service in the waiver.

This proposed rule adds Transitional Services from the YES waiver to the list of programs included in the reimbursement methodology for Transition Assistance Services.

Section-by-Section Summary

HHSC proposes to add transitional services in the YES waiver to the list of programs included in the reimbursement methodology for Transition Assistance Services.

Fiscal Note

Machelle Pharr, Chief Financial Officer for the Department of State Health Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. This is a new service in the new YES waiver program. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each of the first five years the amendment is in effect, the expected public benefit is that the reimbursement methodology for Transitional Services in the YES waiver will be readily available to the public.

Takings Impact Assessment

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

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government

Code. "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.

Public Comment

Questions about the content of this proposal may be directed to Sarah Hambrick in the HHSC Rate Analysis Department by telephone at (512) 491-1431. Written comments on the proposal may be submitted to Ms. Hambrick by facsimile at (512) 491-1998, by e-mail to sarah.hambrick@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

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

§355.508. Reimbursement Methodology for Transition Assistance Services.

The reimbursement for transition assistance services will be determined as a one-time rate per client based on modeled costs of compensation and other support costs using data from surveys, cost reports, consultation with other professionals in delivering contracted services, or other sources determined appropriate by HHSC. This rate is for eligible clients receiving transition assistance services in the Community Based Alternatives, Community Living Assistance and Support Services, Medically Dependent Children, Deaf Blind with Multiple Disabilities, and Consolidated Waiver programs, or transitional services in the Youth Empowerment Services waiver program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2010.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8083

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.8083, concerning Medical Care or Services Provided Outside of Texas in Another State of the United States.

Background and Justification

The current rule addresses program policy; however, Chapter 355 of the Texas Administrative Code is intended to cover Medicaid reimbursement rates rather than program policy. HHSC proposes to repeal the rule and move the program policy information related to out-of-state providers to new rules in Chapter 354, Medicaid Health Services. HHSC is proposing these new rules concurrently with this repeal. These changes are designed to strengthen the Medicaid rules regarding out-of-state providers.

Section-by-Section Summary

HHSC proposes to repeal §355.8083. The program policy information included in this rule will be included in proposed new §354.1440, Medical Care or Services Provided Outside of Texas.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the rule repeal is in effect, there will be no fiscal impact to state government. The proposed repeal will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the rule repeal as they will not be required to alter their business practices as a result of the repeal. There are no anticipated economic costs to persons who are required to comply with the proposed repeal. There is no anticipated negative impact on local employment.

Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the rule repeal is in effect, the public will benefit from the repeal. The anticipated public benefit of enforcing the proposed repeal is the program policy information included in the current rule will be easier to locate, as it will be included in the appropriate chapter related to program policy.

Regulatory Analysis

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

proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Ryan Keyser, Senior Policy Analyst in the Medicaid/CHIP Division, 12365A Riata Trace Pkwy (Bldg 9), Austin, TX 78727; by fax to (512) 249-3707; or by e-mail to ryan.keyser@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for November 4, 2010 from 11:00 a.m. to 12:00 p.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

Statutory Authority

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

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

§355.8083. Medical Care or Services Provided Outside of Texas in Another State of the United States.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2010.

TRD-201005737
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 424-6900

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CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM
SUBCHAPTER C. ENROLLMENT, DISENROLLMENT, AND RENEWAL OF MEMBERSHIP
DIVISION 2. COST-SHARING REQUIREMENTS

1 TAC §370.325

The Texas Health and Human Services Commission (HHSC) proposes to amend §370.325, concerning the annual aggregate cost-sharing cap in the Children's Health Insurance Program (CHIP).

Background and Justification

The Social Security Act and federal regulations prohibit states from imposing in CHIP cost-sharing charges that, in the aggregate, exceed five percent of a family's total income for the length of a child's eligibility period (see §2103(e)(3) of the Social Security Act and 42 C.F.R. §457.560). The CHIP aggregate annual cost-sharing cap is the maximum amount a CHIP family may pay out-of-pocket for the program during the 12-month enrollment period. Once a family reaches its cost-sharing cap, the family is no longer required to pay any cost-sharing for the remainder of the enrollment period. Cost-sharing in CHIP includes an annual enrollment fee and co-payments for certain CHIP services.

The CHIP enrollment broker determines the aggregate cost-sharing cap for a CHIP family based on net income for the family's budget group, and informs the family of its cost-sharing amount upon enrollment. Each family is responsible for tracking its own cost-sharing.

The proposed amended rule deletes the actual cost-sharing caps from the TAC. The proposed amended rule clarifies that the annual aggregate cost-sharing cap for CHIP is established in the Texas CHIP State Plan, as approved by the Centers for Medicare and Medicaid Services (CMS). This proposed change does not prevent members from having access to or being informed about changes in their aggregate cost-sharing cap because HHSC provides public notice in the *Texas Register* each time the agency proposes changes to the Texas CHIP State Plan. In addition, the enrollment broker will mail written notice to CHIP members prior to making any cost-sharing changes for the program.

Section-by-Section Summary

Proposed amended subsection (a) indicates the aggregate cost-sharing caps are established in the Texas CHIP State Plan and are approved by CMS. In addition, the amendment ensures that the CHIP aggregate cost-sharing cap will not exceed five percent of a family's total income in order to comply with federal requirements.

Subsection (b) is deleted because proposed amended subsection (a) clarifies that CHIP aggregate cost-sharing caps are established in the Texas CHIP State Plan, with federal approval.

Subsection (c) is deleted because proposed amended subsection (a) clarifies that CHIP aggregate cost-sharing caps are established in the Texas CHIP State Plan, with federal approval.

Subsection (d) is renumbered as subsection (b) because proposed changes delete current subsections (b) and (c).

The proposed amendment also replaces several references to "member" with "family," to clarify that the annual aggregate CHIP cost-sharing cap applies to the family as a whole, as opposed to a separate cap for each CHIP member in the family.

Fiscal Note

Greta Rymal, Deputy Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local

health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the amendment as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the amendment is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be that the CHIP program remains affordable for families. Since the Texas CHIP State Plan is a public document that specifies the cost-sharing caps for each CHIP income group, CHIP members will continue to have access to and be informed about changes to their annual aggregate CHIP cost-sharing cap. The enrollment broker mails CHIP members written notice prior to implementing cost-sharing changes.

In addition, the proposed rule amendment ensures that the annual aggregate cost-sharing caps for Texas CHIP will not exceed the federal maximum cost-sharing cap amount for CHIP. Therefore, CHIP families will be able to maintain affordable health care coverage in Texas.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "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 environment 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 environment exposure.

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Valerie Eubert-Baller, Senior Policy Analyst, Medicaid and CHIP Division, Health and Human Services Commission at P.O. Box 85200, MC H-310, Austin, Texas 78708-5200, by fax to (512) 491-1953, or by e-mail to Valerie.Eubert-Baller@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for November 3, 2010 from 2:00 p.m. to 3:00 p.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed amendment affects Texas Health and Safety Code, Chapter 62, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§370.325. Cost-Sharing Cap.

(a) The aggregate annual Children's Health Insurance Program (CHIP) [~~There is a~~] cost-sharing cap is based on a family's net Budget Group income, established at the time of eligibility determination, as a [~~the Budget Group's~~] percentage of the federal poverty level (FPL). The aggregate annual CHIP cost-sharing cap is established in the Texas CHIP State Plan and approved by the Centers for Medicare and Medicaid Services (CMS). The aggregate annual CHIP cost-sharing cap will not exceed 5 percent of a family's total annual income as required under federal law and federal regulations (see Social Security Act §2103(e)(3)(B) and 42 C.F.R. §457.560(a)). The Applicant is responsible for tracking CHIP [~~the member's~~] cost-sharing expenditures for the family on the form provided by the Texas Health and Human Services Commission (HHSC) or its designee and advising HHSC's designee when the CHIP cost-sharing cap is reached. HHSC or its [~~HHSC's~~] designee is responsible for:

(1) computing the aggregate annual CHIP cost-sharing cap for the family [~~each member~~] and informing the Applicant of the amount at enrollment;

(2) providing the Applicant with a form for keeping track of each CHIP member's co-payments and enrollment fee payment;

(3) notifying the affected Health Plan within two business days of receiving notice from the Applicant that a family [~~member~~] has reached the aggregate annual CHIP cost-sharing cap; and

(4) informing HHSC that an Applicant is owed a refund in the form of a warrant issued by the State Comptroller's Office, if the Applicant notifies HHSC's designee that the family [~~Applicant~~] has exceeded its aggregate annual CHIP [~~his or her~~] cost-sharing cap and an enrollment fee has been received from the family [~~Applicant~~] that is in excess of the CHIP cost-sharing cap.

[~~(b) A Budget Group with gross income at or below 150% of FPL has a cost-sharing cap during the 12-month coverage period of 1.25% of its annual gross income.~~]

[~~(c) A Budget Group with gross income greater than 150% of FPL has a cost-sharing cap during the 12-month coverage period equal to 2.5%of its annual gross income.~~]

(b) [~~(d)~~] On notification by HHSC's designee that a family [~~member~~] has reached its aggregate annual CHIP [~~the~~] cost-sharing cap, a Health Plan will issue a new Health Plan Member Identification Card reflecting the absence of a co-payment requirement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2010.

TRD-201005738

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 424-6900

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND ASSESSMENT OF EXISTING DEGREE PROGRAMS

19 TAC §5.46

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §5.46, concerning Approval of New Academic Programs and Administrative Changes at Public Universities, Health-Related Institutions, and Assessment of Existing Degree Programs for the purpose of adding an additional criterion for the approval of new doctoral degree programs. The new criterion would stipulate that the most recent six-year baccalaureate degree graduation rate must equal or exceed the most recent six-year statewide average baccalaureate degree graduation rate. For the purposes of the proposed amendment, baccalaureate degree graduation rates at Texas A&M University and The University of Texas at Austin would not be included in the calculation of the statewide average six-year baccalaureate degree graduation rate.

Dr. MacGregor Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed.

Dr. Stephenson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will help assure that institutions applying for new doctoral degree programs establish and maintain productive baccalaureate degree programs. There will be no effect on small businesses. There will be no anticipated economic costs to persons who are required to comply with the section as proposed. There will be no impact on local employment.

Comments on the proposal may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under the provisions of Texas Education Code, Chapter 61, Subchapter C, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The amendment affects Texas Education Code, §61.051(e).

§5.46. Criteria for New Doctoral Programs.

New doctoral programs must meet all of the following criteria:

(1) - (14) (No change.)

(15) Essential Criterion for New Doctoral Degree Programs. An essential criterion for the approval of a new doctoral degree program shall be that the institution's most recent six-year baccalaureate graduation rate should equal or exceed the most recent annual statewide average six-year baccalaureate graduation rate. For the purposes of this rule, the six-year baccalaureate graduation rates at Texas A&M University and The University of Texas at Austin shall not be included in the calculation of the state average. The statewide average six-year baccalaureate graduation rate shall be calculated using the six-year baccalaureate graduation rates of general academic teaching institutions only.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005774
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 27, 2011
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY

DIVISION 1. FINANCIAL ACCOUNTABILITY RATING SYSTEM

19 TAC §§109.1002 - 109.1005

The Texas Education Agency (TEA) proposes amendments to §§109.1002-109.1005, concerning the financial accountability rating system. The sections establish provisions that detail the ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system. The proposed amendments would update the School Financial Integrity Rating System of Texas (School FIRST) by specifying new provisions for implementation beginning with fiscal year 2010-2011, including the deletion of one non-critical school district indicator and

the addition of 18 open-enrollment charter school indicators, along with new rating worksheets and calculations that reflect these changes. The proposed revisions to the rating system are intended to better align School FIRST for the two types of entities and clarify certain aspects of the School FIRST calculations. Additionally, the proposed amendments would establish a process for lowering a financial accountability rating after initial assignment if determined necessary by the commissioner.

House Bill (HB) 3, 81st Texas Legislature, 2009, modified and renumbered the Texas Education Code (TEC), Chapter 39, Subchapter I, Financial Accountability, and established Chapter 39, Subchapter D, Financial Accountability. Rules in 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability Rating System, establish provisions that detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system, in accordance with SB 218, 77th Texas Legislature, 2001, and HB 3. The rules include the financial accountability rating forms that explain the indicators that the TEA will analyze to assign school district and open-enrollment charter school financial accountability ratings. These forms specify the minimum financial accountability rating information that school districts and open-enrollment charter schools are to report to parents and taxpayers.

The proposed amendments to 19 TAC Chapter 109, Subchapter AA, would update the rating system by specifying new provisions to be implemented beginning with fiscal year 2010-2011. The proposed changes to the rating system are intended to better align School FIRST for school districts and open-enrollment charter schools and clarify certain aspects of the School FIRST calculations. Specifically, the proposed amendments to 19 TAC Chapter 109, Subchapter AA, are as follows.

The proposed amendment to 19 TAC §109.1002, Financial Accountability Ratings, would update the rating system by adding new subsections (f) and (g) to specify new provisions that will be implemented beginning with fiscal year 2010-2011, including the deletion of one non-critical school district indicator and the addition of 18 open-enrollment charter school indicators, along with new rating worksheets and calculations that reflect these changes. The proposed rating system would be applicable to financial accountability ratings assigned beginning with data from fiscal year 2010-2011 (the final ratings that will be issued in summer 2012).

In 19 TAC §109.1002, proposed new subsection (f) would establish the financial accountability rating indicators used to determine a school district rating beginning with fiscal year 2010-2011 by adding a new rating worksheet in Figure: 19 TAC §109.1002(f). The proposed new worksheet would include 21 indicators used to calculate a maximum score of 75 points and would differ from the worksheet for previous fiscal years as follows:

Indicator 7, which referred to a school district's academic rating, would be deleted as a rating indicator.

Indicators 8 through 22 would be renumbered accordingly.

Indicator 11 would be modified to provide additional examples.

Indicator 21 would be adjusted to reflect lower interest rates.

In 19 TAC §109.1002, proposed new subsection (g) would establish the financial accountability rating indicators used to determine an open-enrollment charter school rating beginning with fiscal year 2010-2011 by adding a new rating worksheet in Figure: 19 TAC §109.1002(g). The proposed new worksheet would add 18 indicators for a total of 21 indicators used to calculate a maximum score of 75 points.

The proposed amendment to 19 TAC §109.1002 would also reletter existing subsections (f) and (g). Additionally, relettered subsection (i), formerly subsection (g), would clarify that the financial accountability rating for a particular year will always be based on audited data from the previous fiscal year and would establish the rating to be assigned to an entity that fails to submit its annual financial and compliance report on a timely basis.

The proposed amendment to 19 TAC §109.1003, Types of Financial Accountability Ratings, would update language to align the types of ratings assigned to charter schools and traditional school districts and provide for the lowering of a financial accountability rating based on findings of an investigation. Additionally, subsection (c) would be added to specify when ratings are in effect and the circumstances under which a rating may be revised after initial assignment.

The proposed amendment to 19 TAC §109.1004, Criteria for Financial Accountability Ratings, would clarify the criteria for open-enrollment charter school financial indicators. Specifically, proposed new subsection (b) would clarify issues related to indicators and requirements that apply at the charter holder and/or charter school level.

The proposed amendment to 19 TAC §109.1005, Reporting, would clarify the timing of certain required comparisons that must be included in the annual financial management report and state that the annual financial management report prepared by a school district or open-enrollment charter school must also include other written documentation of employment for a superintendent where no contract exists. Additionally, new subsection (b)(2)(F) would add to the annual financial management report a summary schedule of the data submitted using the electronic-based program developed under the financial solvency provisions of the TEC, §39.0822. Revisions to subsection (c) would further clarify the publication requirements for open-enrollment charter schools related to the public hearing notice required for the annual financial management report hearing.

In addition, 19 TAC Chapter 109, Subchapter AA, has been renamed and organized to include the addition of rules relating to financial accountability. The subchapter title has changed from "Commissioner's Rules Concerning Financial Accountability Rating System" to "Commissioner's Rules Concerning Financial Accountability." School FIRST rules are organized under new Division 1, Financial Accountability Rating System.

The proposed amendments would update the worksheet and calculations used beginning in fiscal year 2010-2011 to report school district and open-enrollment charter school financial accountability information. TEA staff will continue to generate school district and open-enrollment charter school financial accountability ratings based on data submitted by school districts and open-enrollment charter schools. TEC, §39.082, specifically requires open-enrollment charter schools to follow the same reporting requirements related to the financial accountability rating system that school districts have followed for several years. The proposal would also require a school district and open-enrollment charter school to include in its annual financial management report a summary schedule of data submitted to support the financial solvency provisions of

the TEC, §39.0822. The proposed amendments would have no new locally maintained paperwork requirements.

Laura Taylor, associate commissioner for accreditation, has determined that for the first five-year period the proposed amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendments.

Ms. Taylor has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be updates to the financial accountability rating system to ensure that school districts and open-enrollment charter schools will be held accountable for the quality of their financial management practices and will achieve improved performance in the management of their financial resources. In addition, reporting increases data available to the public and promotes transparency. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins October 22, 2010, and ends November 22, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 22, 2010.

The amendment is proposed under the Texas Education Code, §39.085, which requires the commissioner of education to adopt rules as necessary for the implementation and administration of financial accountability rating systems for school districts and open-enrollment charter schools.

The amendments implement the TEC, §§39.081-39.085.

§109.1002. Financial Accountability Ratings.

(a) In accordance with Texas Education Code (TEC), Chapter 39, Subchapter D, each school district and open-enrollment charter school must be assigned a financial accountability rating by the Texas Education Agency (TEA). The specific procedures for determining financial accountability ratings will be established annually by the commissioner of education and communicated to all school districts and open-enrollment charter schools.

(b) For fiscal years 2002-2003, 2003-2004, 2004-2005, and 2005-2006, each financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet," effective May 2003.
Figure: 19 TAC §109.1002(b) (No change.)

(c) For fiscal years 2006-2007 and 2007-2008, the financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet Effective August 2006." On this form, Indicator 13 entitled, "Was The Percent Of Operating Expenditures Expended For Instruction More Than or Equal to 65%?" was phased in over a three-year period, as follows.
Figure: 19 TAC §109.1002(c) (No change.)

(1) For fiscal year 2006-2007, the indicator was "Was The Percent Of Operating Expenditures Expended For Instruction More Than or Equal to 55%?"

(2) For fiscal year 2007-2008, the indicator was "Was The Percent Of Operating Expenditures Expended For Instruction More Than or Equal to 60%?"

(3) For fiscal year 2008-2009 and beyond, the indicator was repealed.

(d) For [~~Beginning with~~] fiscal years [~~year~~] 2008-2009 and 2009-2010, the financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet Dated March 2010."
Figure: 19 TAC §109.1002(d) (No change.)

(e) For [~~Beginning with~~] fiscal years [~~year~~] 2008-2009 and 2009-2010, the financial accountability rating of an open-enrollment charter school is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "Charter School - School FIRST - Rating Worksheet Dated March 2010."
Figure: 19 TAC §109.1002(e) (No change.)

(f) Beginning with fiscal year 2010-2011, the financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet Dated July 2010."
Figure: 19 TAC §109.1002(f)

(g) Beginning with fiscal year 2010-2011, the financial accountability rating of an open-enrollment charter school is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST for Charter Schools - Rating Worksheet Dated July 2010."
Figure: 19 TAC §109.1002(g)

(h) [~~(f)~~] A financial accountability rating by a voluntary association is a local option of the district or open-enrollment charter school, but it does not substitute for a financial accountability rating by the TEA.

(i) [~~(g)~~] The TEA will issue a preliminary financial accountability rating to a school district or open-enrollment charter school within 150 days of its complete financial data being made available to the TEA staff. The financial accountability rating for a particular year will always be based on complete and audited financial data from the previous fiscal year given the availability of the data. For example, the final 2010 School FIRST rating issued in August 2010 is based on complete and audited financial data for the 2008-2009 fiscal year and is the financial accountability rating for the 2009-2010 school year for the purposes of §97.1055 of this title (relating to Accreditation Status).

(1) The issuance of the preliminary or final rating will not be delayed if a district or open-enrollment charter school fails to meet the statutory deadline for submitting the annual financial

and compliance report. Instead, a rating of Suspended-Data Quality under §109.1003(a)(5) of this title (relating to Types of Financial Accountability Ratings) will be issued.

(2) A district or open-enrollment charter school may submit a written appeal requesting that the TEA review a preliminary rating if the preliminary rating was based on a data error solely attributable to the TEA's review of the data for any of the indicators.

(A) The TEA office responsible for financial audits must receive the appeal no later than 30 days after the TEA's release of the preliminary rating, and the appeal must include substantial evidence that supports the district's or open-enrollment charter school's position.

(i) Only appeals that would result in a change of the preliminary rating will be considered.

(ii) The TEA staff will review information submitted by the district or open-enrollment charter school to validate the statements made to the extent possible. The TEA will examine all relevant data.

(iii) The TEA staff will prepare a recommendation and forward it to an external panel for review. This review panel will provide independent oversight to the appeals process.

(iv) The external review panel will examine the appeal, supporting documentation, staff research, and the staff recommendation. The review panel will determine its recommendation.

(v) The external review panel's recommendation will be forwarded to the commissioner.

(vi) The commissioner will make a final decision in accordance with the timeline specified in subparagraph (E) of this paragraph.

(B) Appeals received 31 days or more after the TEA issues a preliminary rating will not be considered.

(C) Errors by a district or open-enrollment charter school in recording data or submitting data through the TEA data collection and reporting system do not constitute a valid basis for appealing a preliminary rating.

(D) A district that is the fiscal agent for a shared services [~~service~~] arrangement (SSA) and has the staff of the SSA on its [~~their~~] payroll may appeal the two indicators related to student-to-teacher and student-to-staff ratios if it fails [~~Indicators 17 and 18 if they fail~~] these indicators due to the number of staff that are SSA staff. The district must provide the TEA with the number of staff that are employees of the district and the number of staff that are part of the SSA. This adjustment should not be a factor for an open-enrollment charter school that is a fiscal agent since the SSA reporting requirements are different than a school district.

(E) If the TEA receives an appeal of a preliminary rating, a final rating will be issued to the school district or open-enrollment charter school no later than 45 days after the appeal has been received by the TEA.

(F) If the TEA does not receive an appeal of a preliminary rating, the preliminary rating automatically becomes a final rating on the 31st day after issuance of the preliminary rating.

(G) A final rating issued by the TEA pursuant to this section may not be appealed under the TEC, §7.057, or any other law or rule.

§109.1003. Types of Financial Accountability Ratings.

(a) The types of ratings school districts or open-enrollment charter schools may receive are as follows.

(1) Superior Achievement. In accordance with the procedures established in §109.1002 of this title (relating to Financial Accountability Ratings), a school district or open-enrollment charter school shall be classified as Superior Achievement if it scores within the applicable range established by the commissioner of education for Superior Achievement.

(2) Above Standard Achievement. In accordance with the procedures established in §109.1002 of this title, a school district or open-enrollment charter school shall be classified as Above Standard Achievement if it scores within the applicable range established by the commissioner of education for Above Standard Achievement.

(3) Standard Achievement. In accordance with the procedures established in §109.1002 of this title, a school district or open-enrollment charter school shall be classified as Standard Achievement if it scores within the applicable range established by the commissioner of education for Standard Achievement.

(4) Substandard Achievement. In accordance with the procedures established in §109.1002 of this title, a school district or open-enrollment charter school shall be classified as Substandard Achievement if it [~~the district~~] responds negatively to specified indicators or if it [~~the district~~] scores within the applicable range established by the commissioner of education for Substandard Achievement. The commissioner of education may apply sanctions to a district that is assigned a Substandard Achievement rating and may require other corrective actions.

(5) Suspended--Data Quality. If serious data quality issues are disclosed by the commissioner of education, a Suspended--Data Quality rating shall be assigned to the school district or open-enrollment charter school. The Suspended--Data Quality rating will be assigned until the school district or open-enrollment charter school successfully resolves the data quality issues. The commissioner of education may apply sanctions to a school district or open-enrollment charter school that is assigned a Suspended--Data Quality rating and may require other corrective actions.

(b) The commissioner of education may lower a financial accountability rating based on findings of an investigation conducted under Texas Education Code (TEC), Chapter 39.

(c) Unless revised as a result of investigative activities by the commissioner of education as authorized under TEC, Chapter 39, or other law, a financial accountability rating remains in effect until replaced by a subsequent financial accountability rating. A financial accountability rating shall be revised after initial assignment when circumstances require such revision in order to achieve the purposes specified in §97.1053(a) of this title (relating to Purpose).

[~~(b) The types of ratings open-enrollment charter schools may receive are as follows.~~]

[~~(1) Standard Achievement. In accordance with the procedures established in §109.1002 of this title, an open-enrollment charter school shall be classified as Standard Achievement if it scores within the applicable range established by the commissioner of education for Standard Achievement.~~]

[~~(2) Substandard Achievement. In accordance with the procedures established in §109.1002 of this title, an open-enrollment charter school shall be classified as Substandard Achievement if the open-enrollment charter school responds negatively to specified indicators or if the open-enrollment charter school scores within the applicable range established by the commissioner of education for~~

~~Substandard Achievement.~~ ~~The commissioner of education may apply sanctions to an open-enrollment charter school that is assigned a Substandard Achievement rating and may require other corrective actions.]~~

~~[(3) Suspended--Data Quality. If serious data quality issues are disclosed by the commissioner of education, a Suspended--Data Quality rating shall be assigned to the open-enrollment charter school. The Suspended--Data Quality rating will be assigned until the open-enrollment charter school successfully resolves the data quality issues. The commissioner of education may apply sanctions to an open-enrollment charter school that is assigned a Suspended--Data Quality rating and may require other corrective actions.]~~

§109.1004. Criteria for Financial Accountability Ratings.

(a) The criteria for financial accountability ratings will be based upon indicators established by the commissioner of education and reflected in §109.1002 of this title (relating to Financial Accountability Ratings), in accordance with requirements in state law and after consultation with the comptroller of public accounts. The commissioner of education shall evaluate the rating system annually and may modify the system in order to improve the effectiveness of the rating system. Changes to criteria for ratings and their effective dates will be communicated to school districts and open-enrollment charter schools.

(b) The Financial Accounting Standards Board (FASB) requires not-for-profit entities such as charter holders to present financial statements showing an aggregate view of the entity as a whole.

(1) The Financial Accountability System Resource Guide, Module 10, Special Supplement-Charter Schools, Section 1.7.2, under §109.41 of this title (relating to Financial Accountability System Resource Guide), states that the charter holder is required to submit audited financial statements for the charter holder entity as a whole (both for charter and non-charter operations) as well as additional exhibits for each individual charter (determined by county-district number).

(2) For purposes of comparability among schools, all financial calculations for the indicators under §109.1002(g) of this title use the financial statements for a charter school; however, in the case of consolidated financial statements, any indicators relating to the auditor's opinion on the financial statements, material weaknesses in internal controls, or material noncompliance will be judged on the financial statements for the entity as a whole.

§109.1005. Reporting.

(a) Each school district and open-enrollment charter school is required to report information and financial accountability ratings to parents and taxpayers by implementing the following reporting procedures.

(1) Each school district and open-enrollment charter school is required to prepare and distribute an annual financial management report in accordance with subsection (b) of this section.

(2) The public must be provided an opportunity to comment on the report at a public hearing in accordance with subsection (c) of this section.

(b) The annual financial management report prepared by the school district and open-enrollment charter school must include:

(1) a description of its financial management performance based on a comparison, provided by the Texas Education Agency (TEA), of its performance on the indicators established by the commissioner of education and reflected in §109.1002 of this title (relating to Financial Accountability Ratings). The report will contain information that discloses:

(A) state-established standards; and

(B) the district's or open-enrollment charter school's financial management performance under each indicator for the current and previous year's [~~years~~] financial accountability ratings;

(2) any descriptive information required by the commissioner of education, including:

(A) a copy of the superintendent's current employment contract or other written documentation of employment where no contract exists. The school district or open-enrollment charter school may publish the superintendent's employment contract on the school district's or open-enrollment charter school's Internet site in lieu of publication in the annual financial management report;

(B) a summary schedule for the fiscal year (12-month period) of total reimbursements received by the superintendent and each board member, including transactions resulting from use of the school district's or open-enrollment charter school's credit card(s) to cover expenses incurred by the superintendent and each board member. The summary schedule shall separately report reimbursements for meals, lodging, transportation, motor fuel, and other items (the summary schedule of total reimbursements is not to include reimbursements for supplies and materials that were purchased for the operation of the school district or open-enrollment charter school);

(C) a summary schedule for the fiscal year of the dollar amount of compensation and/or fees received by the superintendent from another school district or open-enrollment charter school or any other outside entity in exchange for professional consulting and/or other personal services. The schedule shall separately report the amount received from each entity;

(D) a summary schedule for the fiscal year of the total dollar amount by the executive officers and board members of gifts that had an economic value of $250 or more in the aggregate in the fiscal year. This reporting requirement only applies to gifts received by the school district's or open-enrollment charter school's (or charter holder's) executive officers and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, as a person related to another person within the first degree by consanguinity or affinity) from an outside entity that received payments from the school district or open-enrollment charter school (or charter holder) in the prior fiscal year, and gifts from competing vendors that were not awarded contracts in the prior fiscal year. This reporting requirement does not apply to reimbursement of travel-related expenses by an outside entity when the purpose of the travel is to investigate or explore matters directly related to the duties of an executive officer or board member, or matters related to attendance at education-related conferences and seminars whose primary purpose is to provide continuing education (this exclusion does not apply to trips for entertainment-related purposes or pleasure trips). This reporting requirement excludes an individual gift or a series of gifts from a single outside entity that had an aggregate economic value of less than $250 per executive officer or board member; [~~and~~]

(E) a summary schedule for the fiscal year of the dollar amount by board member for the aggregate amount of business transactions with the school district or open-enrollment charter school (or charter holder). This reporting requirement is not to duplicate the items disclosed in the summary schedule of reimbursements received by board members; and

(F) a summary schedule of the data submitted using the electronic-based program developed under the financial solvency provisions of Texas Education Code, §39.0822; and

(3) any other information the board of trustees of the district or open-enrollment charter school determines to be useful.

(c) The board of trustees of each school district or open-enrollment charter school shall hold a public hearing on the annual financial management report within two months after receipt of a final financial accountability rating (including a final rating of Suspended--Data Quality). The public hearing is to be held at a location in the district's or open-enrollment charter school's facilities. The board shall give notice of the hearing to owners of real property in the geographic boundaries of the district or open-enrollment charter school and to parents of district or open-enrollment charter school students. In addition to other notice required by law, notice of the hearing must be provided:

(1) to a newspaper of general circulation in the geographic boundaries of the district or each campus of an open-enrollment charter school once a week for two weeks prior to holding the public meeting, providing the time and place where the hearing is to be held. The first notice in the newspaper may not be more than 30 days prior to or less than 14 days prior to the public meeting. If there is not a newspaper published in the county in which the district's [~~or open-enrollment charter school's~~] central administration office is located or within the geographic boundaries of a campus of an open-enrollment charter school, then the notice is to be published in the county nearest the county seat of the county in which the district's [~~or open-enrollment charter school's~~] central administration office is located or in which the campus of the open-enrollment charter school is located; and

(2) through electronic mail to media serving the district or open-enrollment charter school.

(d) At the hearing, the annual financial management report shall be disseminated to the district's or open-enrollment charter school's parents and taxpayers that are in attendance.

(e) The annual financial management report is to be retained in the district or open-enrollment charter school for at least a three-year period after the public hearing and will be made available to parents and taxpayers upon request.

(f) A corrective action plan is to be filed with the TEA by each school district or open-enrollment charter school that received a rating of Substandard Achievement or Suspended--Data Quality. The corrective action plan, which is to be prepared in accordance with instructions from the commissioner of education, is to be filed within one month after the district's or open-enrollment charter school's public hearing. The commissioner of education may require certain information in the corrective action plan to address the factor(s) that may have contributed to a district's or open-enrollment charter school's rating of Substandard Achievement or Suspended--Data Quality.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005775
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER T. SCHOOL-BASED HEALTH CENTERS

25 TAC §§37.531 - 37.538

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§37.531 - 37.538, concerning school-based health centers (SBHC).

BACKGROUND AND PURPOSE

The purpose of these sections is to establish rules for awarding grants to assist school districts with the costs of establishing and operating SBHCs and to establish standards for the funded centers. The proposed amendments reflect changes to Education Code, Chapter 38, resulting from the passage of House Bill (HB) 281, 81st Legislature, Regular Session, 2009, that would broaden applicant eligibility and prohibit awarding funds to not-for-profit organizations that offer reproductive services; update terminology to match current school health and school district industry practices; and update language to align with the current Texas Education Code.

School-based health centers are established by a school district or by community partners in conjunction with a school district or districts at one or more campuses within the school district to deliver primary and preventative health care programs and services for students and their families and prevent emerging health threats that are specific to the district. The department, formerly the Texas Department of Health, started voluntary funding for SBHCs in 1993 and in 1999, 76th Regular Legislative Session, HB 1, and subsequent appropriations acts, created a competitive grant program, and provided start-up funding for SBHCs. These provisions are now codified in Texas Education Code, Chapter 38.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.531 - 37.538 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

Section 37.531 concerns the purpose and allows for procedures for awarding grants to applicants and reflects changes resulting from passage of House Bill 281.

Section 37.532 concerns the definitions and specifically defines an applicant to reflect change resulting from passage of House Bill 281, updates current health and school health industry terminology and aligns with Texas Education Code language.

Section 37.533 concerns the number of awards and aligns the section with the Texas Education Code.

Section 37.534 concerns the dollar amount of awards per biennium and added "as required by law" at the end of the sentence to define how this requirement was originated.

Section 37.535 concerns matching funds and revised rule text by deleting the word "obtained" and added the word "secured" to clarify word usage.

Section 37.536 concerns the competitive request for proposals process and replaced the word "accord" with "accordance" to correct grammar.

Section 37.537 concerns the guidelines for requests for proposals and reflects change resulting from passage of House Bill 281 regarding entities ineligible for grants.

Section 37.538 concerns the standards for school-based health centers and updates current health and school health industry terminology and aligns the section with the Texas Education Code; removes the district as the sole recipient for services provided by the SBHC and eliminates restrictions for when the funds should be used; eliminates the requirement for a SBHC sustainability plan after SBHC funding ends; clarifies which entity is responsible for securing written parental consent for "provision of student services;" allows a SBHC to coordinate with health care providers regardless of community size or location; removes specific language about who will be compensated for services to SBHCs; requires SBHCs to conduct, and not just facilitate client surveys; requires SBHCs to deliver services designed to increase student health through preventive health measures; and requires annual reports.

FISCAL NOTE

Lauri Kalanges, Acting Director, Health Promotion and Chronic Disease Prevention Section, has determined that for each year of the first five-year period 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 amendments as proposed.

MICRO-BUSINESS AND SMALL BUSINESS IMPACT ANALYSIS

Ms. Kalanges has also determined that there will be no effect on small businesses or micro-businesses required to comply with the amendments 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 amendments.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

PUBLIC BENEFIT

Ms. Kalanges has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the amendments. The public benefit anticipated as a result of administering the sections is to provide health care to children through school-based health centers.

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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Ellen Smith, Information Specialist, Child and Health Safety Branch, Department of State Health Services, P.O. Box 149347, Mail Code 1923, Austin, Texas 78714-9347, (512) 458-7111, extension 2140 or by email to ellen.smith@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 amendments have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendments are authorized by Texas Education Code, §38.063, which requires rules establishing standards for health care centers funded through grants; 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 Texas Education Code, Chapter 38; Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§37.531. Purpose.

The purpose of these sections is to establish procedures for awarding grants to assist applicants [~~school districts~~] with the costs of establishing and operating school-based health centers and to establish standards for the funded centers.

§37.532. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--A school district, charter school, private school, local health department, hospital, health care system, university or non-profit organization applying for a grant from the Department of State Health Services to assist with the costs of establishing and operating a school-based health center.

(2) Primary [~~Conventional~~ ~~(primary)~~] health services--Family and home support; health care, including immunizations; dental health care; health education; and preventive health strategies.

(3) (No change.)

(4) Funded applicant--A school district, charter school, private school, local health department, hospital, health care system, uni-

versity or non-profit organization with which the Department of State Health Services executes a contract to establish and operate a school-based health center.

(5) (No change.)

(6) Local School Health Advisory Council [~~or Health Education and Health Care Advisory Council~~]--Persons appointed by the board of trustees of a school district to make recommendations [~~to the district~~] concerning the establishment and operation of school-based health centers and to assist the district in ensuring that local community values are reflected in the operation of each center. In addition to the majority of appointees who shall be parents of students enrolled in the district or districts, the board of trustees may [~~shall~~] also appoint at least one person from each of the following groups:

(A) - (H) (No change.)

(7) - (8) (No change.)

(9) Reproductive services--Family planning services as defined by §56.2 [~~§56.102~~] of this title (relating to Definitions).

(10) Rural area--A county with a population not greater than 50,000, or an area that has been designated under state or federal law as:

(A) - (B) (No change.)

(C) a medically underserved community [~~as defined by the Office of Rural Community Affairs~~].

(11) School-based health center--An entity established by a school district or by community partners in conjunction with a school district or districts [~~a school district jointly with a public health agency~~] at one or more campuses within [~~in~~] the [~~school~~] district to deliver primary and preventative [~~cooperative~~] health care programs and services for students and their families and prevent[~~, prevention of~~] emerging health threats that are specific to the district[~~, and conventional (primary) health services for students and their families~~].

(12) (No change.)

§37.533. Number of Awards.

The department shall award grants according to Texas Education Code, §38.063 [~~at least one grant each state Fiscal Year~~].

§37.534. Dollar Amount of Awards Per Biennium.

Grants awarded by the department shall not exceed $250,000 per applicant per biennium as required by law.

§37.535. Matching Funds.

Funded applicants shall assure the department that matching funds secured [~~obtained~~] from nonfederal sources, including in-kind contributions, community or foundation grants, individual contributions, and operating funds from local government agencies, shall be available to the school-based health center project.

§37.536. Competitive [~~Requests for Proposals~~] Process.

The department shall award grants to applicants annually through a competitive Request for Proposals (RFP) process administered in accordance [~~accord~~] with all applicable policies and procedures of the department.

§37.537. Guidelines [~~Procedures~~] for Requests for Proposals.

The department shall complete at least one Request for Proposals (RFP) process for school-based health centers per state fiscal year.

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

(3) A grant may not be awarded to a non-profit organization that offers reproductive services, contraceptive services, counseling, or referrals, or any other service that requires a license under Health and Safety Code, Chapter 245, or that is affiliated with a nonprofit organization that is licensed under Health and Safety Code, Chapter 245.

§37.538. Standards for School-Based Health Centers.

(a) Funded applicants shall comply with the following standards for school-based health centers.

(1) Community-based solutions. The funded applicant shall facilitate collaboration among families, schools, and members of the community to assess and meet the health needs of the community's children and families. The funded applicant shall utilize all the following strategies for facilitating community-based solutions:

(A) Establish or utilize a local school health advisory council per Education Code, Title 2, Chapter 28, §28.004[~~, or a local health education and health care advisory council per Education Code, Title 2, Chapter 38, §38.058,~~] to make recommendations [~~to the district~~] on the establishment and operation of school-based health centers and to assist the district in ensuring that local community values are reflected in the operation of each center and in the provision of health education.

(B) - (D) (No change.)

(2) Administration. The funded applicant shall plan and administer a school-based health center that meets the health needs of the community's children and families by use of the following strategies:

(A) (No change.)

(B) Establish efficient, client-friendly procedures for utilizing all available sources of funding to compensate [~~the district~~] for services provided by the school-based health center, including reimbursement from the state Medicaid program, a state children's health plan program, private health insurance or health benefit plans. Funds received through billing for services shall be used for [~~current and future~~] operations of the school-based health center.

(C) (No change.)

(D) Develop and present a specific, detailed plan for [~~future~~] funding [~~of~~] the school-based health center [~~that demonstrates how the center will continue to operate when grant funding is no longer available~~].

(E) Research, develop, and implement the forms and administrative procedures necessary to remain in compliance with all applicable and relevant legislation and regulations. Required procedures contained in applicable legislation for operation of school-based health centers include but are not limited to the following:

(i) provision of services to a student only if the school-based health center [~~school district or the provider with whom the district contracts~~] has obtained written consent to the services from the student's parent within the one-year period preceding the date on which the services are provided, and the consent has not been revoked;

(ii) - (v) (No change.)

(vi) a good faith effort by staff of a school-based health center [~~located in a rural area described by §37.532(8) of this title (relating to Definitions)~~] to identify and coordinate with existing health care providers;

(vii) - (viii) (No change.)

(ix) utilization of all available sources of funding to compensate [~~the school district or provider with whom the district contracts~~] for services provided by a school-based health center;

(x) conduct [~~or facilitation of the conduct of~~] client surveys in school-based health centers by funded applicants; and

(xi) (No change.)

(3) Emphasis on prevention. A funded applicant shall provide for primary emphasis on the delivery of primary [~~conventional (primary)~~] health services and secondary emphasis on the implementation of population-based models that prevent emerging health threats by use of the following strategies:

(A) - (E) (No change.)

(4) Focus on outcomes. A funded applicant shall focus on the achievement of outcomes that can be documented, using the following strategies:

(A) delivering primary [~~conventional (primary)~~] health services and disease prevention of emerging health threats through access to appropriate primary and preventive care for children through a program designed to achieve the following goals:

(i) - (ii) (No change.)

(iii) an increase in the health of students through preventive health measures including immunizations, and routine physical examinations including checkups conducted in accordance with the Texas Health Steps program.

~~(iii)~~ ~~stabilization of each student's physical well-being.~~]

(B) A funded applicant shall research, document, analyze, and evaluate outcomes, including the goals listed in subparagraph (A) of this paragraph, by activities that include but are not limited to the following:

(i) (No change.)

(ii) providing quarterly and annual reports as required by the department;

(iii) - (iv) (No change.)

(b) Compliance. A funded applicant shall comply with standards required by Education Code, Chapter 38, Subchapter B, and provide to the department annually a statement signed by a representative of the school district and the local school health advisory council stating that the district and the local school health advisory council have [~~has~~] made a good faith effort to meet all requirements of the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 8, 2010.

TRD-201005753
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 458-7111 x6972

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CHAPTER 169. ZOONOSIS CONTROL
SUBCHAPTER F. REPTILE-ASSOCIATED SALMONELLOSIS

25 TAC §169.121

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §169.121, concerning reptile-associated salmonellosis.

BACKGROUND AND PURPOSE

The amendment is necessary to comply with Government Code, Chapter 81, Subchapter I, "Animal-Borne Diseases," which requires retail pet stores to post signs and distribute warnings relating to reptile-associated salmonellosis to purchasers of reptiles. The signs and warnings are to be in accordance with the form and content designated by the department.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 169.121 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

The amendment to §169.121 allows for consistency with the Centers for Disease Control and Prevention recommendations; clarification of requirements for retailers to post warning signs and distribute written warnings to inform purchasers that reptiles may carry *Salmonella* bacteria in accordance with Health and Safety Code, Chapter 81; and recommendations for preventing transmission of *Salmonella* from reptiles to humans.

FISCAL NOTE

Adolfo Valadez, M.D., MPH, Division Director, Prevention and Preparedness Services, has determined that for each year of the first five-year period 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

Dr. Valadez 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. 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. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

PUBLIC BENEFIT

In addition, Dr. Valadez 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 public benefit anticipated as a result of enforcing or administering the section will be the increased public awareness of the risk involved with having reptiles as pets as it pertains to reptile-associated salmonellosis.

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 amendment 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 Tom Sidwa, DVM, Department of State Health Services, Community Preparedness Section, Zoonosis Control Branch, Mail Code 1956, P.O. Box 149347, Austin, Texas 78714-9347, or by email to Tom.Sidwa@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 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, §81.004, which allows the department to adopt rules necessary for the effective administration and implementation of the Communicable Disease Prevention and Control Act; Health and Safety Code, §81.352, which requires the department to adopt a rule governing the form and content of the sign and written warning relating to reptile-associated salmonellosis; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The amendment affects Health and Safety Code, Chapters 81 and 1001; and Government Code, Chapter 531.

§169.121. Reptile-Associated Salmonellosis.

(a) The Texas Health and Safety Code, §81.352, requires retail stores that sell reptiles to post warning signs and distribute written warnings regarding reptile-associated salmonellosis to purchasers in accordance with the form and content designated by the Department of State Health Services.

(b) The warning signs must meet the following guidelines.

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

(3) At a minimum, the contents of the sign must include the following recommendations for preventing transmission of *Salmonella* from reptiles to humans.

(A) Persons should always wash their hands thoroughly with soap and running water after handling reptiles or reptile cages or after contact with reptile feces or the water from reptile containers or aquariums. Wash your hands before you touch your mouth.

(B) Persons at increased risk for infection or serious complications of salmonellosis, such as children younger than 5 years of age, the elderly, and persons whose immune systems have been weakened by pregnancy, disease (for example, cancer), or certain medical treatments (for example, chemotherapy), [~~(e.g., children aged <5years and immunocompromised persons)~~] should avoid contact with reptiles and any items that have been in contact with reptiles.

(C) Reptiles should be kept out of households or facilities that include children younger than 5 years of age, the elderly, or persons whose immune systems have been weakened by pregnancy, disease (for example, cancer), or certain medical treatments (for example, chemotherapy) [~~aged <5years or immunocompromised persons~~]. Families expecting a new child should remove any reptile from the home before the infant arrives.

[~~(D) Reptiles should not be allowed in childcare centers.~~]

(D) [~~(E)~~] Reptiles should not be allowed to roam freely throughout the home or living area. Wash and disinfect surfaces that the reptile or its cage has contacted.

(E) [~~(F)~~] Reptiles should be kept out of kitchens and other [~~food-preparation~~] areas where food or drink is prepared or consumed [~~to prevent contamination~~]. Kitchen sinks should not be used to bathe reptiles or to wash their dishes, cages, or aquariums. If bathtubs are used for these purposes, they should be cleaned thoroughly and disinfected with bleach. Wear disposable gloves when washing the dishes, cages, or aquariums.

(4) The sign must also contain a statement that reptiles carry *Salmonella* bacteria, which can make people sick, but reptiles may not appear to be sick.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 8, 2010.

TRD-201005751
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER G. CAGING REQUIREMENTS AND STANDARDS FOR DANGEROUS WILD ANIMALS

25 TAC §169.131, §169.132

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §169.131 and new §169.132, concerning the caging requirements and registration for dangerous wild animals.

BACKGROUND AND PURPOSE

The amendment to §169.131 and new §169.132 are necessary to comply with Government Code, Chapter 822, Subchapter E, "Dangerous Wild Animals," which requires owners of a dangerous wild animal to keep and confine the animal in accordance with the caging requirements and registration established by the department.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 169.131 has been reviewed and the department has determined that reasons for adopting this section continue to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

The amendment to §169.131 will provide for a safe, healthy, and humane environment for the animals; prevent escape by the animals; and clarify the minimum caging requirements relating to the structures and outdoor facilities containing dangerous wild animals in compliance with Health and Safety Code, §822.111.

Addition of new §169.132 has been implemented to provide clarification of the submission process of a certificate copy to the department by the holder of a certificate of registration of a dangerous wild animal, as required in Health and Safety Code, §822.106(b). A procedure was established at the time of initial adoption of §169.131 in 2002 that an owner of a dangerous wild animal submitted an annual fee of $20 per animal to the department to cover the cost of filing a copy of a certificate of registration to the department, as mandated by Health and Safety Code, §822.106(b).

FISCAL NOTE

Adolfo Valadez, M.D., MPH, Division Director, Prevention and Preparedness Services, has determined that for each year of the first five-year period that §169.131 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.

Dr. Valadez has also determined that for each year of the first five-year period that §169.132 will be in effect, there will be an average of $1,793 collected from owners of dangerous wild animals to cover the costs of filing the copies of certificates of registration, as required by Health and Safety Code, §822.106(b). No fiscal implications to local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. Valadez has been determined that there will be no adverse impact on small businesses or micro-businesses required to comply with §169.131 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. 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.

Dr. Valadez has determined that the proposed fee in §169.132 will have a continuing adverse impact on some small or micro-businesses. However, the impact is estimated to remain on a scale similar to that associated with the procedure that has been in place since 2002. New §169.132 has the same provisions as the long-standing procedure. The fee is $20 per animal. Due to the low number of registrants and the base cost of maintaining a tracking system, reduction of the fee to mitigate the impact of the rule is not supported. The department has considered alternatives that would reduce the effect of the fee, but the fee and the method of calculating its amount are set by Health and Safety Code, §822.106, and the department has no flexibility in assessing it. It is difficult to determine how many small businesses and micro-businesses will be required to pay the fee. Many small businesses and micro-businesses that own dangerous wild animals are qualified for one of the many exemptions in Health and Safety Code, §822.102. Over 100 counties prohibit the possession of dangerous wild animals. In addition, there is no data available from a trade association of businesses that own dangerous wild animals, as no such organization exists. There are two business registrants under the current registration scheme who pay $60 and $840. The department estimates there are between two and five small businesses that will be subject to the fee and they will pay between $20 and $840, depending on how many animals they own. The cost to persons will include an owner of a dangerous wild animal who will continue to pay $20 per animal to the department to cover the costs of filing a copy of a certificate of registration. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Dr. Valadez 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 that it enhances public health and safety by keeping dangerous wild animals contained in safe, healthy, and humane environments.

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 amendment and new rule 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 Tom Sidwa, DVM, Department of State Health Services, Community Preparedness Section, Zoonosis Control Branch, Mail Code 1956, P.O. Box 149347, Austin, Texas 78714-9347, or by email to Tom.Sidwa@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 amendment and new rule are authorized by Health and Safety Code, §822.111, which requires the department to establish the caging requirements and standards for the keeping and confinement of dangerous wild animals; Health and Safety Code, §822.106(b), which requires the department to charge a fee for filing a certificate of registration for a dangerous wild animal; 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 review of §169.131 implements Government Code, §2001.039.

The amendment and new rule affect Health and Safety Code, Chapters 822 and 1001; and Government Code, Chapter 531.

§169.131. Caging Requirements and Standards for Dangerous Wild Animals.

(a) (No change.)

(b) General Requirements.

(1) Primary enclosures for housing dangerous wild animals shall be sufficiently strong to prevent escape and to protect the animal(s) from injury and shall be equipped with perimeter fences [~~structural safety barriers~~] to prevent any public contact with the animal(s). Perimeter fences [~~Structural barriers~~] may be constructed from materials such as fencing, landscaping, or close-mesh wire, provided that materials used are safe and effective in preventing public contact.

(2) (No change.)

(3) A perimeter fence, sufficient to deter entry by the public, shall be a minimum of 8 feet in height and shall completely surround the premises where the animal(s) is housed or exercised outdoors. Perimeter fences constructed of materials, such as chain link or welded wire, that allow objects to be passed through them shall be at least 3 feet from the primary enclosure or appropriately enclosed exercise area.

(c) (No change.)

(d) Primary Enclosure Size and Equipment Requirements. No dangerous wild animal shall be confined in any primary enclosure that contains more individual animals than specified in this section, is smaller in dimension than specified in this section, or is not equipped as specified in this section. The area occupied by pools, ponds, or lakes shall be in addition to the space requirements for the primary enclosure. Specifications in this section also pertain to hybrids of designated species.

(1) Primates.

(A) In addition to species-related requirements of this section, each primary enclosure shall have accessible devices to provide physical stimulation or manipulation compatible with the species. Each device shall be noninjurious and may include, but is not limited to, boxes, balls, mirrors, [~~or~~] foraging items, or pools. The area occupied by pools shall be in addition to the space requirements for the primary enclosure.

(B) - (C) (No change.)

(D) Requirements for specific primate species are as follows:

(i) Baboons. For one animal, the primary enclosure shall have a minimum floor area of 100 square feet with a wall or fence at least 8 feet high. For each additional animal, primary enclosure size shall be increased by at least 100 square feet.

(ii) Chimpanzees. For one animal, the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 8 feet high. For each additional animal, primary enclosure size shall be increased by at least 100 square feet.

(iii) Orangutans. For one animal, the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 10 feet high. For each additional animal, primary enclosure size shall be increased by at least 200 square feet.

(iv) Gorillas. For one animal, the primary enclosure shall have a minimum floor area of 300 square feet with a wall or fence at least 8 feet high. For each additional animal, primary enclosure size shall be increased by at least 200 square feet.

(2) Wild felines.

(A) - (D) (No change.)

(E) Requirements for specific species of wild felines are as follows:

(i) Lions, tigers, and cheetahs.

(I) For one animal, the primary enclosure shall have a minimum floor area of 300 square feet with a wall or fence at least 8 feet high. For each additional animal, primary enclosure size shall be increased by at least 150 square feet.

(II) Outdoor primary enclosures over 1,000 square feet (uncovered) shall have vertical jump walls at least 10 feet high with a 45-degree inward-angle overhang at least 2 feet wide or jump walls at least 12 feet high without an overhang. The inward-angle fencing shall be made of the same material as the vertical fencing.

(ii) Jaguars, leopards, and cougars.

(I) For one animal, the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 8 feet high. For each additional animal, primary enclosure size shall be increased by at least 100 square feet.

(II) (No change.)

(iii) Bobcats, lynxes, ocelots, caracals, and servals. For one animal, the primary enclosure shall have a minimum floor area of 80 square feet with a wall or fence at least 8 feet high. For each additional animal, primary enclosure size shall be increased by at least 40 square feet.

(3) Bears.

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

(D) Requirements [~~Requirement~~] for specific types of bears are as follows:

(i) Sun bears.

(I) For one animal, the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 8 feet high. For each additional animal, primary enclosure size shall be increased by at least 100 square feet.

(II) (No change.)

(ii) Black bears and Asiatic bears.

(I) For one animal, the primary enclosure shall have a minimum floor area of 300 square feet with a wall or fence at

least 8 feet high. For each additional animal, primary enclosure size shall be increased by at least 150 square feet.

(II) (No change.)

(iii) Brown bears and polar bears.

(I) For one animal, the primary enclosure shall have a minimum floor area of 400 square feet with a wall or fence at least 10 feet high. For each additional animal, primary enclosure size shall be increased by at least 200 square feet.

(II) - (III) (No change.)

(4) Coyotes, jackals, and hyenas [~~and jackals~~].

(A) - (B) (No change.)

(C) For one animal, the primary enclosure shall have a minimum floor area of 150 square feet (200 square feet for hyenas) with a wall or fence at least 6 feet high. For each additional animal, primary enclosure size shall be increased by at least 100 square feet.

(D) (No change.)

(E) Uncovered outdoor primary enclosures over 1,000 square feet shall have vertical jump walls at least 8 feet high with a 45-degree inward-angle overhang at least 2 feet wide or jump walls at least 10 feet high without an overhang. The inward-angle fencing shall be made of the same material as the vertical fencing.

~~[(5) Hyenas.]~~

~~[(A) For one animal the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 6 feet high. For each additional animal primary enclosure size shall be increased by at least 100 square feet.]~~

~~[(B) Each primary enclosure shall have an elevated platform(s) large enough to accommodate all animals in the enclosure simultaneously.]~~

~~[(C) Outdoor primary enclosures over 1,000 square feet (uncovered) shall have vertical jump walls at least 8 feet high with a 45 degree inward angle overhang at least 2 feet wide or jump walls at least 10 feet high without an overhang. The inward angle fencing shall be made of the same material as the vertical fencing.]~~

§169.132. Registration, Fee.

To comply with Texas Health and Safety Code, §822.106, not later than the 10th day after the date a person receives the certificate of registration required by Texas Health and Safety Code, Chapter 822, the person shall file a clear and legible copy of the certificate of registration with the Texas Department of State Health Services, Zoonosis Control, P.O. Box 149347, Mail Code 1956, Austin, Texas 78714-9347. The fee for filing the certificate is $20 per animal, submitted with the copy of the certificate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 8, 2010.

TRD-201005752
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 458-7111 x6972

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CHAPTER 200. HEALTHCARE-ASSOCIATED INFECTIONS

SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §§200.1 - 200.10

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§200.1 - 200.10, concerning the reporting of healthcare-associated infections (HAI).

BACKGROUND AND PURPOSE

The new sections are necessary to comply with Health and Safety Code, Chapter 98, "Reporting of Health Care-Associated Infections and Preventable Adverse Events," which requires the department to establish the Texas Healthcare-Associated Infection Reporting System. General hospitals and ambulatory surgical centers are required to report surgical site infections associated with seven surgeries. Pediatric and adolescent hospitals are required to report surgical site infections associated with three surgeries. In addition, general hospitals are required to report the incidence of laboratory-confirmed central line-associated bloodstream infections occurring in any special care setting and the incidence of respiratory syncytial virus (RSV) occurring in any pediatric inpatient unit.

Health and Safety Code, Chapter 98, also requires the department to: (1) establish the Advisory Panel on Healthcare-Associated Infections; (2) provide for the education and training of health care facility staff; (3) review reporting activities of health care facilities to ensure the data provided is valid; (4) compile and make available to the public a summary, by health care facility, of the infections reported by the facility; (5) make the departmental summary available on an Internet website; and (6) inform the public of the option to report suspected healthcare-associated infections to the department.

SECTION-BY-SECTION SUMMARY

New §200.1 defines ambulatory surgical centers, central lines, general hospitals, great vessels, pediatric and adolescent hospitals, special care setting, and other words. New §200.2 identifies who shall report; new §200.3 identifies how to report HAI data to the department; new §200.4 identifies the surgeries or procedures from which infections are to be reported, and includes alternative surgical site infections to report if a healthcare facility does not perform at least a monthly average of 50 of any combination of procedures included in §200.4; new §200.5 addresses data to report; new §200.6 and new §200.7 provide language stating when reporting will begin for specific procedures and a schedule for reporting; new §200.8 and new §200.10 address processes for data validation and data verification; and new §200.9 addresses how HAI data will be displayed on the website.

FISCAL NOTE

Adolfo Valadez, M.D., M.P.H., Acting Section 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 fiscal implications to state government as a result of enforcing or administering the sections as proposed. There will be costs associated with implementing the Texas Healthcare-Associated Infection Reporting System. For fiscal year (FY) 2010, the estimated cost to the department is $376,986. For FY 2011, the

estimated cost is $1,701,308. For FY 2012, the estimated cost is $963,850 and $933,724 for FYs 2013 - 2014. There are fiscal implications for local governments that own or manage general hospitals.

Ambulatory Surgery Centers.

The Emerging and Acute Infectious Disease Branch conducted a survey of ambulatory surgery centers to collect estimated costs related to the proposed rules. A total of 390 centers are licensed in Texas. The Branch randomly selected 11%, or 43 centers, to be surveyed as a representative sample.

A total of 23 of 43 centers surveyed provided cost estimates related to the proposed rules. The centers were requested to provide costs related to (1) new staff; (2) information technology (IT) equipment; and (3) other costs such as office space, contracts and staff training.

Overall, 22 centers reported no costs for new staff, equipment or other costs for year one, year two, year three, year four and year five. Fifteen of the 22 enters had no costs because they do not perform any of the operative procedures noted in the proposed rules.

Only one of the 23 centers reported costs for one new staff member at $50,000 for each of the five years. This center also reported costs ($1,000) in year one for equipment, but no costs for equipment in years two through five.

Using the survey results, it is estimated that only 4.3% (or 17 centers) of the 390 surgery centers would have fiscal costs related to the proposed rules. These costs would be approximately $51,000 for year one and $50,000 for years two through five for each of the 17 surgery centers.

Local government ambulatory surgery center costs.

One of the 23 surgery centers responding to the survey was owned by a local government. This center reported staffing costs of $50,000 annually for years one through five. This surgery center reported other costs totaling $1,000 for year one and no other costs for years two through five. Using the survey results, the cost for government-owned surgery centers would be approximately $51,000 for year one and $50,000 for years two through five.

Hospital costs.

The Emerging and Acute Infectious Disease Branch conducted a survey of general hospitals in Texas to collect estimated costs related to the proposed rules. A total of 512 hospitals are licensed in Texas. The Branch randomly selected 7%, or 36 hospitals, to be surveyed.

A total of 12 hospitals provided cost estimates related to the proposed rules. Four of the 12 hospitals indicated no costs related to the proposed rules. For the first year, the costs for the new staff and equipment ranged from zero to $66,200. The average cost for year one was $21,278. During year two the average cost was $24,223; year three was $27,041; year four was $22,791; and year five was $22,824.

Using the results of the survey, approximately 341 of the 512 hospitals in Texas would have cost related to the proposed rules. The costs for year one would be $21,278; for year two, $24,223; for year three, $27,041; for year four, $22,791; and for year five, $22,824.

Local government hospital costs.

Of the 12 hospitals responding to the survey, two hospitals indicated that they were owned by local governments. For the first year, the two hospitals reported new costs ranging from $15,000 to $15,320. The average cost for year one was $15,160. During year two the average cost was $31,778; year three was $31,925; year four was $6,240; and year five was $6,340.

Using the survey results, it is estimated that only 85 hospitals will be local government owned. These local government-owned hospitals would have an average cost in year one of $15,160 to implement the proposed rules.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. Valadez has also determined that there will be an effect on small businesses or micro-businesses required to comply with the sections as proposed.

Ambulatory Surgery Centers.

Of the 23 centers responding to the survey, six indicated they were small businesses, e.g. less 100 employees or less than $6 million in annual gross receipts. None of the six centers reported costs in years one through five associated with the proposed rules. Of the 23 centers responding to the survey, two indicated they were micro businesses. Neither reported costs in years one through five associated with the proposed rules.

Using the survey results, it is estimated that 34.8% of the 390 surgery centers or 136 centers, are small or micro-businesses. There would be no costs related to the proposed rules in years one through five for any of these 136 surgery centers.

Hospitals.

Of the 12 hospitals responding to the survey, none reported being a small or micro-business. If any of the 512 licensed hospitals in Texas are small or micro-business, their estimated costs would be similar to the costs reported by the 12 hospitals responding to the survey. These costs were for year one, $21,278; for year two, $24,223; for year three, $27,041; for year four, $22,791; and for year five, $22,824.

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

Dr. Valadez has 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 department will compile an annual summary, by health care facility, of the reporting infections. The summary will be made available on an Internet website. Showing infections rates by procedure and health care facility will benefit the public by providing information on infection risk at each health care facility. Efforts by health care facilities to reduce the infection rate for their facility will also benefit the public. The department and other Health and Human Service Commission agencies may use the reported data for research and analysis. In the case of the department, this will consist of earlier identification of outbreaks or infections associated with particular types of procedures, equipment or facilities.

REGULATORY ANALYSIS

The department has determined that the proposed rules are 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. The proposed rules are 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 Jeff Taylor, Manager, Emerging and Acute Infectious Disease Branch, Infectious Disease Control Unit, Prevention and Preparedness Services Division, Department of State Health Services, Mail Code 1960, P.O. Box 149347, Austin, Texas 78714-9347, (512) 458-7676 or by email to Jeff.Taylor@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 new sections are proposed under Health and Safety Code, §98.101, which authorizes the Executive Commissioner to adopt rules to implement Chapter 98; 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 new sections affect the Health and Safety Code, Chapters 98 and 1001; and Government Code, Chapter 531.

§200.1. Definitions.

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

(1) Ambulatory surgical center--A facility licensed under Texas Health and Safety Code, Chapter 243.

(2) Central line--An intravascular catheter that terminates at or close to the heart or in one of the great vessels which is used for infusion, withdrawal of blood or hemodynamic monitoring.

(3) CMS--Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services.

(4) Comments--Notes or explanations submitted by the healthcare facilities concerning the department's compilation and summary of the facilities' data that is made available to the public as described in the Texas Health and Safety Code, §98.106.

(5) Data--Facility and patient level information reported to the department for the purposes of monitoring healthcare-associated infections.

(6) Data summary--Facility level information prepared by the department for each health care facility required to report in this state to facilitate comparisons of risk-adjusted infection rates.

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

(8) Device days--The number of patients in a special care setting who have 1 or more central lines for each day of the month, determined at the same time each day of the reporting quarter.

(9) Facility contact--Person identified by the healthcare facility responsible for coordinating communications related to data submission, verification and approval of data summary.

(10) Facility Identification Number--The unique, distinguishable, uniform number used to identify each health care facility.

(11) General hospital--A hospital licensed under Texas Health and Safety Code, Chapter 241, or a hospital that provides surgical or obstetrical services and that is maintained or operated by the state.

(12) Great vessels--Primary blood vessels to include aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal jugular veins, subclavian veins, external iliac veins, common femoral veins, and in neonates, the umbilical artery or umbilical vein.

(13) Healthcare-associated infection (HAI)--Localized or symptomatic condition resulting from an adverse reaction to an infectious agent or its toxins to which a patient is exposed in the course of the delivery of health care to the patient.

(14) Healthcare-associated infection data--Patient level information identifying the patient, procedures and events required by these rules, infections resulting from those procedures or events, and causative pathogens when laboratory confirmed.

(15) Healthcare facility or facility--A general hospital or ambulatory surgery center.

(16) ICD-9-CM--The ninth revision of the International Classification of Diseases, Clinical Modification that is used to code and classify morbidity data from the inpatient and outpatient records, physician offices.

(17) Inpatient Treatment--An admission to an acute care hospital of greater than 24 hours for treatment of a post operative surgical site infection.

(18) NHSN--Federal Centers for Disease Control and Prevention's National Healthcare Safety Network or its successor.

(19) Pediatric and adolescent hospital--A general hospital that specializes in providing services to children and adolescents, as defined in Texas Health and Safety Code, §241.003.

(20) Reporting quarters--First quarter: January 1 through March 31; Second quarter: April 1 through June 30; Third quarter: July 1 through September 30; Fourth quarter: October 1 through December 31.

(21) Risk adjustment--A statistical method to account for a patient's severity of illness and the likelihood of development of a healthcare-associated infection (e.g., duration of procedure in minutes, wound class, and American Society of Anesthesiology (ASA) score).

(22) Special care setting--A unit or service of a general, pediatric or adolescent hospital that provides treatment to inpatients

who require extraordinary care on a concentrated and continuous basis. The term includes an adult intensive care unit, a burn intensive care unit and a critical care unit.

(23) Validation--The process of comparing data submissions to original patient and facility records to ascertain that data submission processes are accurate.

(24) Verification--Review of data submitted electronically to assure completeness and internal consistency.

§200.2. General Reporting Guidelines for Healthcare-Associated Infection Data.

(a) All general hospitals and ambulatory surgical centers in operation during any part of a reporting quarter described in §200.1 of this title (relating to Definitions) shall submit healthcare-associated infection (HAI) data as specified in §§200.3 - 200.7 of this title to the department.

(b) Facilities that fail to comply with reporting requirements are subject to the enforcement provisions of Texas Health and Safety Code, Chapter 98, Subchapter D.

(c) HAI data submission does not constitute the report of a disease as defined and required in Chapter 97 of this title (relating to Communicable Diseases).

(d) HAI data submission does not constitute annual events or incident reporting as defined in §133.49 of this title (relating to Reporting Requirements), or §135.26 of this title (relating to Reporting Requirements).

(e) The facility shall ensure that the department has accurate email and phone information for a facility contact. Facilities may provide institutional contact information (e.g., IP@hospital.org, 1-800-INFECTS). The facility shall ensure that communications from the department are continuously monitored even if the position is vacant for any reason (vacation, illness, etc.).

§200.3. How to Report.

(a) Facilities shall submit HAI data required by this section to a secure, electronic interface designated by the department.

(b) Facilities shall comply with the process of the designated secure, electronic interface to allow the department access to HAI data as specified in §§200.3 - 200.7 of this title.

(c) Facilities shall use their facility identification number to identify their facility in the electronic data and correspondence with the department. Each facility meeting the definition of ambulatory surgical center or general hospital as defined in §200.1(1) and (11) of this title (relating to Definitions) shall have its own facility identification number.

(1) CMS certified health care facilities shall use the CMS-assigned provider number.

(2) If a facility has multiple campuses or a hospital and ambulatory surgical center are associated by ownership, each site shall each use a unique CMS provider number. In the event that a facility is not CMS certified or a facility operates multiple facilities under one CMS number, the facility shall contact the department to receive a facility identification number.

(3) The relationship between CMS-assigned and department-assigned facility identifiers and the name and license number of the facility is public information.

(d) The department shall notify the facility contact by email, fax, or in writing 90 calendar days in advance of any change in requirements for reporting HAI data.

(e) Facilities shall report HAI data on patients who are admitted to the facility for inpatient treatment of a surgical site infection associated with a procedure listed in §200.4 of this title (relating to Which Events to Report) within 30 calendar days of the procedure or within 1 year of the procedure if the procedure involved an implant.

(1) If the facility treating the patient performed the procedure the facility shall report the infection in the designated electronic data interface according to the surveillance methods described by the interface and these rules.

(2) If the facility treating the patient did not perform the surgery the treating facility shall report the infection and the name of the facility alleged to have performed the procedure to the department by email, fax, or in writing. The department shall inform the facility that allegedly performed the procedure. If confirmed, the facility notified by the department shall then report the infection in the designated electronic data interface according to the surveillance methods described and these rules.

§200.4. Which Events to Report.

(a) ICD-9 codes as designated by the federal Centers for Disease Control and Prevention's National Healthcare Safety Network (NHSN) or its successor shall constitute the definition of events listed in this rule. Facilities shall adapt to changes in ICD-9-CM specifications as directed by NHSN and the department.

(b) All general hospitals and ambulatory surgical centers shall report the number of device days and laboratory-confirmed central line-associated primary bloodstream infections in special care settings including the causative pathogen.

(c) General hospitals and ambulatory surgical centers except those described in subsection (d) of this section shall report the HAI data related to the following surgical procedures. The surgical procedure is defined by the NHSN operative procedure and the ICD-9-CM codes linked to that operative procedure.

(1) Colon surgeries (Colon surgery--17.31 - 17.36, 17.39, 45.03, 45.26, 45.41, 45.49, 45.52, 45.71 - 45.76, 45.79, 45.81 - 45.83, 45.92 - 45.95, 46.03, 46.04, 46.10, 46.11, 46.13, 46.14, 46.43, 46.52, 46.75, 46.76, 46.94).

(2) Hip arthroplasties (Hip prosthesis--00.70 - 00.73, 00.85 - 00.87, 81.51 - 81.53).

(3) Knee arthroplasties (Knee prosthesis--00.80 - 00.84, 81.54, 81.55).

(4) Abdominal hysterectomies (Abdominal hysterectomy--68.31, 68.39, 68.41, 68.49, 68.61, 68.69).

(5) Vaginal hysterectomies (Vaginal hysterectomy--68.51, 68.59, 68.71, 68.79).

(6) Coronary artery bypass grafts (Coronary artery bypass graft with both chest and donor site incisions--36.10 - 36.14, 36.19; Coronary artery bypass graft with chest incision only--36.15 - 36.17, 36.2).

(7) Vascular procedures (Abdominal aortic aneurysm repair--38.34, 38.44, 38.64; Carotid endarterectomy--38.12; Peripheral vascular bypass surgery--39.29).

(d) A general hospital or ambulatory surgical center that does not perform at least a monthly average of 50 of any combination of the procedures listed in subsection (c) of this section shall report HAI data relating to all of the three surgical procedures most frequently performed at the facility that are also listed by NHSN. The average number of procedures and the three most frequently performed procedures shall

be determined based on the calendar year prior to the reporting year as determined by facility contact.

(e) Pediatric and adolescent hospitals except those described in subsection (f) of this section shall report the HAI data relating to the following surgical procedures. The surgical procedure is defined by the NHSN operative procedure and the ICD-9-CM codes linked to that operative procedure.

(1) Spinal surgery with instrumentation (Spinal fusion--81.00 - 81.08, 81.62 - 81.64; Laminectomy--03.01, 03.02, 03.09, 80.50, 80.51, 80.53, 80.54+, 80.59, 84.60 - 84.69, 84.80 - 84.85; Refusion of spine--81.30 - 81.39).

(2) Cardiac procedures, excluding thoracic cardiac procedures (Cardiac surgery--35.00 - 35.04, 35.10 - 35.14, 35.20 - 35.28, 35.31 - 35.35, 35.39, 35.42, 35.50, 35.51, 35.53, 35.54, 35.60 - 35.63, 35.70 - 35.73, 35.81 - 35.84, 35.91 - 35.95, 35.98, 35.99, 37.10, 37.11, 37.24, 37.31 - 37.33, 37.35, 37.36, 37.41, 37.49, 37.60; Heart transplant--37.51 - 37.55).

(3) Ventriculaperitoneal shunts including revision and removal of shunt (ventriculaperitoneal shunt--02.2, 02.31 - 02.35, 02.39, 02.42, 02.43, 54.95).

(f) A pediatric and adolescent hospital that does not perform at least a monthly average of 50 of any combination of the procedures listed in subsection (e) of this section shall report the HAI data relating to all of the three surgical procedures most frequently performed at the facility that are also listed by NHSN. The average number of procedures and the three most frequently performed procedures shall be determined based on the calendar year prior to the reporting year. Reporting of HAI data for all three surgeries shall begin for the entire quarter in which the enrollment deadline occurs as specified in §200.6 of this title (relating to When to Initiate Reporting).

(g) Facilities shall also report denominator data for the events identified above for calculation of risk adjusted infection rates as required in Texas Health and Safety Code, §98.106(b). NHSN protocols shall be used for the determination of denominator data.

§200.5. Data to Report.

Data required to be submitted in §200.4 of this title (relating to Which Events to Report) shall be reported using the training, enrollment, case definitions and protocols required by the department in coordination with NHSN or its successor. Specific modules and variables will be identified for facilities prior to the enrollment deadline through training, departmental website, and notification of the facility contact. Content or data element changes will be communicated in the same manner 90 calendar days in advance of the change.

§200.6. When to Initiate Reporting.

(a) All healthcare facilities shall enroll in the secure, electronic interface within 90 calendar days of the effective date of this rule, or the designation of the secure electronic interface, whichever is later.

(b) Facilities shall submit HAI data beginning with the entire reporting quarter of the effective date in subsection (a) of this section.

(1) All facilities--HAI data relating to central line-associated primary bloodstream infections in special care units.

(2) Ambulatory surgical centers and general hospitals, except pediatric and adolescent hospitals--HAI data relating to knee arthroplasties as defined in §200.4(c)(3) of this title (relating to Which Events to Report) or the three surgical procedures most frequently performed as described in §200.4(d) of this title.

(3) Pediatric and adolescent hospitals--HAI data relating to ventriculaperitoneal shunts as defined in §200.4(e)(3) of this title or the three surgical procedures most frequently performed as defined in §200.4(f) of this title.

(c) In addition to the data listed in subsection (b) of this section, facilities shall submit the following data beginning January 1, 2012.

(1) Ambulatory surgical centers and general hospitals, except pediatric and adolescent hospitals - HAI data relating to hip arthroplasties as defined in §200.4(c)(2) of this title and coronary artery bypass grafts as defined in §200.4(c)(6) of this title or HAI data relating to the three surgical procedures most frequently performed as described in §200.4(d) of this title.

(2) Pediatric and adolescent hospitals - HAI data relating to cardiac procedures as defined in §200.4(e)(2) of this title or the three surgical procedures most frequently performed as described in §200.4(f) of this title.

(d) In addition to the data listed in subsections (b) and (c) of this section, facilities shall submit the following data beginning January 1, 2013.

(1) Ambulatory surgical centers and general hospitals, except pediatric and adolescent hospitals--HAI data relating to abdominal and vaginal hysterectomies as defined in §200.4(c)(4) and §200.4(c)(5) of this title, colon surgeries as defined in §200.4(c)(1) of this title, and vascular procedures as defined in §200.4(c)(7) of this title or the three surgical procedures and associated infections most frequently performed as described in §200.4(d) of this title.

(2) Pediatric and adolescent hospitals--HAI data relating to spinal surgeries with instrumentation as defined in §200.4(e)(1) of this title or the three surgical procedures most frequently performed as described in §200.4(f) of this title.

(e) Facilities that are required to report after this initial enrollment period (e.g., newly licensed, change in provider status, etc.) shall enroll within 90 calendar days of the receipt of a CMS provider number or a HAI reporting facility identification number and shall submit data beginning with the entire reporting quarter after receipt of the identification number.

§200.7. Schedule for HAI Reporting.

(a) Facilities shall submit HAI data according to the following schedule in Table 1.
Figure: 25 TAC §200.7(a)

(1) HAI data for device days and procedures occurring between January 1 and March 31 shall be submitted no later than May 31 of the same calendar year.

(2) HAI data for device days and procedures occurring between April 1 and June 30 shall be submitted no later than August 31, of the same calendar year.

(3) HAI data for device days and procedures occurring between July 1 and September 30 shall be submitted no later than November 30 of the same calendar year.

(4) HAI data for device days and procedures occurring between October 1 and December 31 shall be submitted no later than February 28 of the following calendar year.

(b) If any of the dates in subsection (a) of this section fall on a weekend or holiday, facilities shall submit on the following business day.

§200.8. Verification of Healthcare-associated Infection Data and Correction of Errors.

(a) Data verification.

(1) The department shall establish acceptance criteria to ensure the accuracy and completeness of all data submitted to the department and will make these criteria available.

(2) The department will notify the facility contact by email, fax, or in writing to acknowledge receipt of data and to communicate its acceptability within 15 calendar days after the facility data submission deadline described in §200.7 of this title (relating to Schedule for HAI Reporting). This notification will include specific information on any errors found.

(b) Correction of Errors and Disputes.

(1) Facilities shall correct all identified errors, including data determined to be missing, and resubmit the corrected data through the designated secure electronic interface.

(2) Corrections shall be submitted according to the following schedule.

(A) Not later than June 30 for HAI data for device days and procedures occurring between January 1 and March 31.

(B) Not later than September 30 for HAI data for device days and procedures occurring between April 1 through June 30.

(C) Not later than December 31 for HAI data for device days and procedures occurring between July 1 through September 30.

(D) Not later than March 31 for HAI data for device days and procedures occurring between October 1 through December 31.

(3) If the facility is unable to correct an identified error or disputes one or more of the identified errors, the facility contact shall notify the department by email, fax, or in writing the reasons why these are the best available data within 15 calendar days of receipt of notice of corrections.

(4) Data corrections that occur following publication of a data summary shall be submitted to the department for use in future data compilations.

(c) If any of the dates listed in subsection (b) of this section fall on a weekend or holiday, facilities shall submit on the following business day.

§200.9. Data Summary Display.

(a) Development of data summary.

(1) The department shall compile a data summary for each reporting facility. The data summary shall be made available to the public on an Internet website in a format to be determined by the department.

(2) The data summary shall be based on data submitted by the facility and may include raw numbers for numerator and denominator, rates, risk-adjustments, and state and national comparative data.

(3) Facilities that have failed to submit data or submitted data in a format other than that specified by the department shall be identified in the summary made available to the public.

(4) Data summaries based on data that the department has determined to be inaccurate or incomplete which has not or cannot be corrected by the facility in a timely fashion shall be included in the data summary. Explanatory notes shall be included in the summary to inform the public of the nature of the data deficiencies.

(5) Data displays shall be based on the best available data at the time the summaries are completed. Displays of trends over time may include updated or corrected data that are discrepant with previous summaries.

(b) Facility comments.

(1) Prior to publication of the data summary for public use, the department shall notify the facility contact by email, fax, or in writing of the opportunity to submit comments for publication with the data summary.

(2) The facility contact shall submit comments using the format determined by the department or notify the department by email, fax, or in writing that the facility does not wish to comment.

(3) The comments shall be 1,250 characters in length or less.

(4) The department shall review facility comments to assure that they are concise and pertain only to the facility and the current data. The department may edit comments that are not concise or do not pertain only to the facility and current data.

(5) Comments are due to the department on or before October 30 of the same calendar year for summaries of data collected January 1 through June 30 and on or before April 30 of the following calendar year for summaries of data collected July 1 through December 31.

§200.10. Data Validation.

All data submitted by facilities are subject to data validation. When requested by the department, a healthcare facility shall provide the department access to, copies of and/or information from the facility documents and records underlying and documenting the data submitted, as well as other patient related documentation deemed necessary to validate facility data.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 8, 2010.

TRD-201005755
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 458-7111 x6972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 25. BEACH CLEANING AND MAINTENANCE ASSISTANCE PROGRAM

31 TAC §§25.1 - 25.3, 25.5, 25.12, 25.13, 25.15, 25.20 - 25.22

The General Land Office (GLO) proposes amendments to §25.1, relating to Definitions, §25.2, relating to General, §25.3, relating to Administration of Funds, §25.5, relating to Beach Cleaning Responsibility, §25.12, relating to Eligible Costs, §25.13, relating to Extent of State Assistance, §25.15, relating to Payment Procedures, §25.20, relating to Audit, §25.21, relating to Ineligibility, and §25.22, related to Hearing. The proposed amendments incorporate the new responsibility of the state to clean and maintain public beaches under certain circumstances in Texas Natural Resources Code, Chapter 61, Subchapter C, relating to Maintenance of Public Beaches, §61.067, relating to Duty of State, as

amended by Acts 2009, 81st Legislature, Chapter 6, §1, effective September 1, 2009. The proposed amendments also make minor revisions to clarify duties and procedures and to correct formatting and citation errors.

In §25.1, relating to Definitions, the proposed amendment makes minor changes to refer to the beach cleaning and maintenance reimbursement program (program) implemented under the rules as "the program," rather than using several different words and phrases to refer to the same thing. The definition of "clean and maintain" in §25.1(5) is amended to clarify that the employment of lifeguards, beach patrols, and litter patrols is included only for cities and counties, and therefore not to the state.

The proposed amendment to §25.2(b), relating to General, reflects the fact that the funding for the program comes from appropriations to the GLO and the GLO's allocation of appropriated funds to the program.

The proposed amendment to §25.3, relating to Administration of Funds, reflects that the rules relating to the program are found in Subchapter C, rather than Subchapter B, of Chapter 61 of the Natural Resources Code.

The proposed amendment to §25.5, relating to Beach Cleaning Responsibility, changes the title of the section to Responsibilities. It also adds new §25.5(a), which sets forth the state's responsibility to provide assistance to local governments in cleaning and maintaining public beaches, including the duty to clean, maintain and remove debris from a beach in a threatened area in a declaration of a state of disaster issued under Government Code, §418.014. New §25.5(b) clarifies that the responsibility for cities to clean public beaches is found in Natural Resources Code, §61.065. New §25.5(c) clarifies that the responsibility for counties to clean public beaches is found in Natural Resources Code, §61.066. The remaining subsections are renumbered.

The proposed amendments to §§25.12, 25.13, 25.20 and 25.21 correct minor inconsistencies in the language of the rules. The proposed amendment to §25.22, related to Hearing, updates the statutory reference to the Administrative Procedure Act, Government Code, Chapter 2001, and includes the GLO's rules of practice and procedures found in Chapter 2 of this title.

FISCAL AND EMPLOYMENT IMPACTS

Helen Young, Deputy Commissioner for Coastal Resources, has determined that, for each year of the first five years the new sections as proposed are in effect, there will be no fiscal implications for the state government. There will also be no fiscal impact on local governments as a result of the proposed sections.

Ms. Young has determined that the proposed rulemaking will not have an effect on the costs of compliance for individuals and small businesses or large businesses. Ms. Young has also determined the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Young has determined the public will benefit from this proposed rulemaking because it will streamline the vacancy application process and provide the public with a clearer understanding of how the process works. The proposed amendments will also implement the most recent changes to the vacancy statute and provide consistency between the statutes and rules.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Furthermore, the GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the new rule.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to 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 the state or a sector of the state.

PUBLIC COMMENT

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The proposed rulemaking is made under Texas Natural Resources Code §61.067(e), which authorizes the GLO to adopt rules reasonably necessary to perform its duties under Chapter 61, Subchapter C.

The proposed rulemaking affects Texas Natural Resources Code Chapter 61, Subchapter C, relating to the maintenance of public beaches. No other statutes, articles, or codes are affected by this proposal.

§25.1. Definitions.

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

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

(5) Clean and maintain--The collection and removal of litter and debris, and the supervision and elimination of sanitary and safety conditions which would pose a threat to personal health or safety if not removed or otherwise corrected. For purposes of cities and counties described in this subchapter, the [~~The~~] phrase "clean and maintain" includes the employment of lifeguards, beach patrols, and litter patrols.

(6) (No change.)

(7) Participant or sponsor--The city or county which receives assistance under this subchapter [~~program~~].

(8) Program--The beach cleaning and maintenance assistance program implemented under this subchapter and Natural Resources Code, Chapter 61, Subchapter C (relating to Maintenance of the Public Beaches).

(9) [~~(8)~~] Public beach--Any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired the right of use or easement to or over such area by prescription, dedication, presumption, estoppel, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized by law and custom. This definition does not include a beach which is not accessible by public road or ferry.

(10) [~~(9)~~] Qualified official--The individual authorized to represent the applicant or participant in all contractual agreements.

(11) [~~(10)~~] State fiscal year--The period of time beginning September 1 and ending August 31.

§25.2. General.

(a) (No change.)

(b) The availability of funds for this program is contingent upon appropriations by the legislature to the agency and the agency's allocation of appropriated funds to the program.

§25.3. Administration of Funds.

The agency is designated as the administering agency for funding of this program, and is empowered to enforce these rules and to distribute in a fair and impartial manner the "state share" of funds to cities and counties in accordance with [~~the Texas~~] Natural Resources Code, Chapter 61, Subchapter C [~~B~~], this subchapter [~~chapter~~], and procedures and accounting methods adopted by the agency.

§25.5. Responsibilities [~~Beach Cleaning Responsibility~~].

(a) It is the responsibility of the state through the agency to provide assistance to local governments in the cleaning of public beaches. For purposes of this section, assistance includes, but is not limited to, the following:

(1) Awards made under this program;

(2) Cleaning and maintaining public beaches, at the sole discretion of the GLO, to maintain the public beach easement; and

(3) Cleaning, maintenance and debris removal from a public beach that is located in an area designated as a threatened area in a declaration of a state of disaster issued under §418.014 of the Government Code.

(b) It is the responsibility of the governing body of any incorporated city, town, or village bordering the Gulf of Mexico to clean and maintain public beaches as provided in Natural Resources Code §61.065.

(c) It is the responsibility of the commissioners court of any county bordering on the Gulf of Mexico to clean and maintain public beaches as provided in Natural Resources Code §61.066.

(d) [~~(a)~~] The responsibility for inspection by the agency is vested in the designated agency field office in the area.

(1) [~~(b)~~] The designated field office will conduct routine inspection of the area under its authority.

(2) [~~(c)~~] The designated field office will furnish a report of inspection activities and any public comment received by the field office concerning beach maintenance. This report will be a general summary as to the method, quality, frequency, and acceptability to which the public beaches are being cleaned and maintained by the participant. Problem areas, repeat discrepancies, and safety hazards will be given special emphasis.

§25.12. Eligible Costs.

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

(e) Costs incurred by coastal cities and counties in implementing beach nourishment projects, conducted under [~~Texas~~] Natural Resources Code, Chapter 33, Subchapter H (relating to Coastal Erosion), may qualify as eligible expenses under §25.13(a) of this title (relating to Extent of State Assistance) and for program [~~BMFP~~] reimbursement subject to §25.3 of this title (relating to Administration of Funds).

§25.13. Extent of State Assistance.

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

(c) Monies received by an eligible coastal municipality under the Tax Code, §156.2511, shall be included as part of the state share as required by [~~the Texas~~] Natural Resources Code, §61.076(c)(2), and must be spent on cleaning and maintaining the beach as required by the Tax Code, §156.2511(b); however, these funds are not eligible for reimbursement from the [~~BMFP~~] program as specifically prohibited by [~~the Texas~~] Natural Resources Code, §61.076(c)(1).

§25.15. Payment Procedures.

(a) Payments to participants will be made on a reimbursable basis, and the amount of payment will be computed by the agency. Participants who qualify for no greater than two-thirds reimbursement under [~~the~~] Natural Resources Code, §§61.068 - 61.070, will be reimbursed semiannually.

(b) Participants who qualify for 40% reimbursement under [~~the~~] Natural Resources Code, §61.080 and §61.081, will be reimbursed semiannually.

§25.20. Audit.

The audit branch of the finance division of the agency will perform random audits of and shall have access to all participants' records related to its [~~the~~] beach cleaning program for the purpose of verifying compliance with the provisions of the program [~~this chapter and the Texas Natural Resources Code, Chapter 61, Subchapter C~~].

§25.21. Ineligibility.

(a) If the agency determines by audit or other method that the participant no longer complies with the requirements of the program [~~this chapter or the Texas Natural Resources Code, Chapter 61, Subchapter C~~], it shall notify the participant that further payment will not be made until the agency is satisfied that there is no longer any failure to comply. The agency may withhold funds and require reimbursement to be made for funds claimed and received in violation of the program. [~~this chapter or the Texas Natural Resources Code, Chapter 61, Subchapter C.~~]

(b) The notice required by subsection (a) of this section must be given:

(1) to the acting head of the participant that is not in compliance with the program [~~this chapter or the Texas Natural Resources Code, Chapter 61, Subchapter C~~];

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

(c) The notice required by subsection (a) of this section shall be by hand delivery, overnight courier, or by registered or certified mail, return receipt requested, and shall include notice of:

(1) the act or omission that has rendered the participant in violation of the program [~~this chapter or the Texas Natural Resources Code, Chapter 61, Subchapter C~~];

(2) the action required of the participant in order for the participant to be in compliance with the program [~~this chapter or the Texas Natural Resources Code, Chapter 61, Subchapter C~~];

(3) the amount, if any, required to be reimbursed for funds claimed and received in violation of the program [~~this chapter and the Texas Natural Resources Code, Chapter 61, Subchapter C~~]; and

(4) (No change.)

§25.22. Hearing.

[~~(a)~~] Hearings under this subchapter [~~chapter~~] shall be conducted in accordance with the provisions of Government Code, Chapter 2001 (relating to Administrative Procedure), and Chapter 2 of this title (relating to Rules of Practice and Procedure) [~~the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13(a) (Vernon Supp. 1991)~~].

~~[(b) All documents shall be filed with the administrative hearings clerk at the following address: Administrative Hearings Clerk, General Land Office, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495.]~~

~~[(c) The hearing examiner shall determine the date, time, place, and amount of time to be allotted for any hearing to be held under this chapter.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005779
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 475-1859

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PART 4. SCHOOL LAND BOARD

CHAPTER 154. LAND SALES, ACQUISITIONS, AND TRADES

31 TAC §154.1

The School Land Board (board) proposes an amendment to 31 TAC Part 4, Chapter 154, §154.1, relating to the Sale of Permanent School Fund Land.

BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENT

The intent of this rulemaking is to clarify and assist the public in understanding the rules related to sales of permanent school fund land by the board and to incorporate the statutory changes made during the 81st Legislative Regular Session by House Bill (HB) 3461 (Acts 2009, 81st Legislature, Chapter 1175, effective June 19, 2009) which amended Texas Natural Resources Code §§32.110(a), 51.052 (e) and 51.052(f).

The proposed amendments to §154.1 add language to the definition of "surrounding land" in the rule to clarify that such land must have a common boundary with a particular tract of land approved for sale by the board. The amendments also authorize the board to waive the special fee (an amount equal to one and one-half percent of the bid or sale amount) on land sales to any state agency, board, commission, political subdivision or other governmental entity, consistent with legislative changes. The amendments also substitute the word "special" for the word "statutory" in describing this fee, in order to conform to the language used in Texas Natural Resources Code §32.110.

FISCAL AND EMPLOYMENT IMPACTS

Hal Croft, Deputy Commissioner for the GLO's Asset Management Division, has determined that for each year of the first five years the amended section as proposed is in effect, the fiscal implications for state government as a result of enforcing or administering the amended section could vary depending on the amount of land an entity purchased pursuant to Texas Natural Resources Code §32.110, and whether or not the special fee in connection with such purchase was waived by the board. Any fiscal impact to the State is not expected to be significant, however.

Mr. Croft has determined that for each year of the first five years the amended section as proposed is in effect, the fiscal implications for a local governmental entity could vary depending on the amount of land an entity purchased pursuant to Texas Natural Resources Code §32.110, and whether or not the special fee in connection with such purchase was waived by the board. Any fiscal impact on local governments is not expected to be significant, however.

Mr. Croft has also determined that for each year of the first five years the amended section as proposed is in effect, there will be no increase in economic costs to small or large business for compliance.

Mr. Croft has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. Croft has determined that the public will benefit from the rule clarification provided by the proposed amendment, as well as from the incorporation of changes made by the Texas Legislature to the GLO's governing statutes. There will be no economic cost to persons required to comply with these regulations.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state. The proposed amendments to Chapter 154 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, compe-

tition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative changes in Texas Natural Resources Code §§32.110(a), 51.052(e) and 51.052(f) related to conditions for the sale of land and waiver of the special fee on land sales to any state agency, board, commission, political subdivision or other governmental entity.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §32.110, relating to the board's ability to waive the special fee associated with land sales to a state agency, board, commission, political subdivision or other governmental entity, Texas Natural Resources Code §32.062, requiring the board to adopt rules of procedure and rules for sale of land under that chapter, and Texas Natural Resources Code §51.052, providing that the board shall adopt rules to implement the preference right granted to owners of land that surround a tract of land approved for sale by the board.

Texas Natural Resources Code §§32.110(a), 51.052(e) and 51.052(f) are affected and implemented by the proposed amendments to §154.1.

§154.1. Sale of Permanent School Fund Land.

(a) Definitions.

(1) Surrounding land means all of the privately owned property having a common boundary with a particular tract <u>of land approved for sale by the board</u>.

(2) - (4) (No change.)

(b) - (d) (No change.)

(e) Upon approval of the board, payment of the purchase price, payment of the <u>special</u> [~~statutory~~] fee, and, if applicable, filing of the survey and the partition agreement, a land award or deed may be issued in accordance with the terms prescribed by the board. <u>The board may waive the special fee on land sales to any state agency, board, commission, political subdivision, or other governmental entity.</u>

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2010.

TRD-201005732
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
School Land Board
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 475-1859

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 1. STATE MENTAL RETARDATION AUTHORITY RESPONSIBILITIES

SUBCHAPTER D. ADMINISTRATIVE HEARINGS OF THE DEPARTMENT IN CONTESTED CASES

40 TAC §§1.151 - 1.160, 1.162, 1.163

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Chapter 1, Subchapter D, consisting of §1.151, concerning purpose; §1.152, concerning applicability and scope of rules; §1.153, concerning definitions; §1.154, concerning administrative law judge; §1.155, concerning hearing guidelines; §1.156, concerning conduct of hearings--general requirements; §1.157, concerning prehearing procedure; §1.158, concerning evidence and depositions; §1.159, concerning deliberation; §1.160, concerning decisions; §1.162, concerning references; and §1.163, concerning distribution.

BACKGROUND AND PURPOSE

HHSC, on behalf of DADS, is proposing new rules that govern hearings under the Administrative Procedure Act (APA) elsewhere in this issue of the *Texas Register.* As part of this proposal, DADS proposes to repeal rules in Chapter 1, Subchapter D, that are no longer required in the rule base.

SECTION-BY-SECTION SUMMARY

The repeal of §1.151 deletes the purpose statement for the subchapter.

The repeal of §1.152 deletes language concerning the applicability and scope of the subchapter.

The repeal of §1.153 deletes the definitions for the subchapter.

The repeal of §1.154 deletes the qualifications of an administrative law judge.

The repeal of §1.155 deletes the guidelines for a hearing.

The repeal of §1.156 deletes requirements governing the conduct of a hearing.

The repeal of §1.157 deletes prehearing procedures.

The repeal of §1.158 deletes requirements concerning evidence and depositions.

The repeal of §1.159 deletes the requirements concerning deliberation after a hearing.

The repeal of §1.160 deletes the requirements concerning a decision after a hearing.

The repeal of §1.162 deletes the list of references contained in the subchapter.

The repeal of §1.163 deletes the list of entities to which the subchapter was distributed.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the repeal does not impose any new requirements on entities required to comply with the rule.

PUBLIC BENEFIT AND COSTS

Tom Phillips, DADS Chief Operating Officer, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the sections is that unnecessary rules will be removed from the DADS rule base.

Mr. Phillips anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Nancy Porter at (512) 438-4820 in DADS' Legal Services section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-006, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, TX 78714-9030 or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be either (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 006" in the subject line.

STATUTORY AUTHORITY

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

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§1.151. Purpose.
§1.152. Applicability and Scope of Rules.
§1.153. Definitions.
§1.154. Administrative Law Judge.
§1.155. Hearing Guidelines.
§1.156. Conduct of Hearings--General Requirements.
§1.157. Prehearing Procedure.
§1.158. Evidence and Depositions.
§1.159. Deliberation.
§1.160. Decisions.
§1.162. References.
§1.163. Distribution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005772
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 438-3734

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CHAPTER 41. CONSUMER DIRECTED SERVICES OPTION

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §41.103 in Subchapter A, Introduction; §41.239 and §41.241 in Subchapter B, Responsibilities of Employers and Designated Representatives; and §41.335 in Subchapter C, Enrollment and Responsibilities of Consumer Directed Services Agencies, in Chapter 41, Consumer Directed Services Option.

BACKGROUND AND PURPOSE

Texas Administrative Code, Title 40, Part 1, Chapter 68, concerning electronic visit verification (EVV) system, is proposed

elsewhere in this issue of the *Texas Register.* Chapter 68 requires an employer and a consumer directed services agency (CDSA) to use an EVV system to document the provision of certain services, including some services offered under the consumer directed services (CDS) option. The proposed amendments revise documentation requirements, such as paper submissions and hand corrections to time sheets, to allow an employer and a CDSA to document services using an EVV system.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §41.103, concerning definitions, add a definition of "EVV system" as new paragraph (18) and renumber subsequent paragraphs.

The proposed amendments to §41.239, concerning documentation of services delivered, clarify that documentation generated by an EVV system supplements, with certain exceptions, existing narrative service delivery documentation requirements for an employer or designated representative.

The proposed amendments to §41.241, concerning payment of services, clarify that only the employer or designated representative may approve documentation of services delivered for payment and that, upon receipt of a request from the CDSA for corrected documentation, an employer or designated representative who is using an EVV system is not required to obtain a correction from the employee and submit to the CDSA the corrected and approved documentation of services delivered.

The proposed amendments to §41.335, concerning documentation of services delivered, clarify that a service provider using an EVV system is not required to obtain a dated signature of the employer or designated representative on documentation of services delivered.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments because proposed amendments to Chapter 41 simply clarify the documentation required when an EVV system is used. The use of an EVV system for certain CDS option services will be mandated by Chapter 68, concerning electronic visit verification (EVV) system, which is proposed elsewhere in this issue of the *Texas Register.* The proposal for Chapter 68 explains that DADS has determined that the implementation of EVV has foreseeable implications relating to costs or revenues of state or local government.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because the changes to Chapter 41 clarify the documentation required when an EVV system is used. The use of an EVV system for certain services will be mandated by Chapter 68, concerning electronic visit verification (EVV) system, which is proposed elsewhere in this issue of the *Texas Register.* The proposal for Chapter 68 explains that DADS has determined that the implementation of EVV could have an adverse economic impact on small businesses or micro-businesses.

PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, DADS Deputy Commissioner, has determined that, for each year of the first five years the proposed amendments are in effect, the public benefit expected as a result of enforcing the amendments is an increase in the accuracy of service delivery documentation and a reduction in billing errors and fraudulent time sheet reporting.

Mr. Weizenbaum anticipates that there is not an economic cost to persons who are required to comply with the proposed amendments. The use of an EVV system for certain services will be mandated by Chapter 68, concerning electronic visit verification (EVV) system, which is proposed elsewhere in this issue of the *Texas Register* and explains the economic cost to persons who are required to comply with the new rules. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Elizabeth Jones at (512) 438-4855 in DADS' Center for Policy and Innovation. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-9R035, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R035" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §41.103

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§41.103. Definitions.

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

(1) - (17) (No change.)

(18) EVV system--Electronic visit verification system. As defined in §68.102(7) of this title (relating to Definitions), an electronic visit verification system that:

(A) allows a service provider to electronically report:

(i) the service recipient's identity;

(ii) the service provider's identity;

(iii) the date and time the service provider begins and ends the delivery of services;

(iv) the location of service delivery; and

(v) tasks performed by the service provider; and

(B) meets other guidelines described on the DADS website at www.dads.state.tx.us.

(19) [~~(18)~~] FMS--Financial management services. Services delivered by the CDSA to an employer such as orientation, training, support, assistance with and approval of budgets, and processing payroll and payables on behalf of the employer.

(20) [~~(19)~~] Individual--A person enrolled in a program.

(21) [~~(20)~~] LAR--Legally authorized representative. A person authorized or required by law to act on behalf of an individual with regard to a matter described in this chapter, including a parent, guardian, managing conservator of a minor, or the guardian of an adult.

(22) [~~(21)~~] Minor--A person who is 17 years of age or younger.

(23) [~~(22)~~] Non-program resource--A resource other than an individual's program that provides one or more services or items.

(24) [~~(23)~~] Parent--A natural, legal, foster, or adoptive parent of a minor.

(25) [~~(24)~~] Program--A community services program administered by DADS.

(26) [~~(25)~~] Service agreement--A written agreement or acknowledgment between two parties that defines the relationship and lists respective roles and responsibilities.

(27) [~~(26)~~] Service area--A geographic area served by a program or specified in a contract with DADS.

(28) [~~(27)~~] Service back-up plan--A documented plan to ensure that critical program services delivered through the CDS option are provided to an individual when normal service delivery is interrupted or there is an emergency.

(29) [~~(28)~~] Service coordinator--An employee of a mental retardation authority who is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services, including DADS program services. A service coordinator provides case management services to an individual.

(30) [~~(29)~~] Service plan--A document developed in accordance with rules governing an individual's program that identifies the program services to be provided to the individual, the number of units of each service to be provided, and the projected cost of each service.

(31) [~~(30)~~] Service planning team--A group of people determined based on the requirements of an individual's program. Some DADS programs refer to the service planning team as an interdisciplinary team.

(32) [~~(31)~~] Service provider--An employee, contractor, or vendor.

(33) [~~(32)~~] Support advisor--A person who provides support consultation to an employer, or a DR, or an individual receiving services through the CDS option.

(34) [~~(33)~~] Support consultation--An optional service that is provided by a support advisor and provides a level of assistance and training beyond that provided by the CDSA through FMS. Support consultation helps an employer to meet the required employer responsibilities of the CDS option and to successfully deliver program services.

(35) [~~(34)~~] Vendor--A person selected by an employer or DR to deliver services, goods, or items, other than a direct service to an individual. Examples of vendors include a building contractor, electrician, durable medical equipment provider, pharmacy, or a medical supply company.

(36) [~~(35)~~] Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005768
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 438-3734

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SUBCHAPTER B. RESPONSIBILITIES OF EMPLOYERS AND DESIGNATED REPRESENTATIVES

40 TAC §41.239, §41.241

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§41.239. Documentation of Services Delivered.

(a) (No change.)

(b) In addition to documentation generated by an EVV system, documentation of services delivered [~~Documentation~~] must include:

(1) time sheets for employees who are not required to document their time worked using an EVV system as required by Chapter 68 of this title (relating to Electronic Visit Verification (EVV) System);

(2) - (5) (No change.)

(c) Unless using an EVV system as required by Chapter 68 of this title:

(1) [~~(c)~~] an [~~An~~] employer or DR must review documentation of services delivered and obtain corrections or revisions before submitting the document to the CDSA for payment; [~~.~~]

(2) [~~(d)~~] the [~~The~~] person making an error or omission on documentation [~~a document~~] of services delivered must:

(A) [~~(1)~~] enter the omission; and

(B) [~~(2)~~] for an error, make correction by:

(i) [~~(A)~~] making one line through the error;

(ii) [~~(B)~~] entering the correction; and

(iii) [~~(C)~~] initialing and dating the correction; and [~~.~~]

(3) [~~(e)~~] [~~To approve the document for payment,~~] the employer or DR must sign and date the documentation of services delivered [~~document~~] after the last entry or correction made by the service provider to signify approval for payment of the documentation of services delivered.

§41.241. Payment of Services.

(a) Only the employer or DR may approve the documentation of services delivered described in §41.239 of this chapter (relating to Documentation of Services Delivered).

(b) [~~(a)~~] An employer or DR must submit to the CDSA approved documentation of services delivered for payment on or before the due date established by the CDSA.

(c) [~~(b)~~] Unless using an EVV system as required by Chapter 68 of this title (relating to Electronic Visit Verification (EVV) System), an [~~An~~] employer or DR must obtain a correction and submit the corrected and approved documentation of services delivered to the CDSA within three calendar days after receiving a request for corrected documentation of services delivered [~~notice~~] from the CDSA.

[~~(c) Only the employer or DR may approve a document submitted to the CDSA for payment.~~]

(d) [~~If a document is submitted electronically to the CDSA, the employer or DR must also submit a copy of the document, signed and dated by the service provider and the employer or DR, to the CDSA, by fax or United States mail.~~] The CDSA does not pay for [~~future~~] services delivered [~~by the service provider~~] until receipt of [~~the~~] approved documentation [~~document~~].

(e) (No change.)

(f) DADS does not pay, and the CDSA must not pay, for purchases or services that:

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

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005769

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 438-3734

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SUBCHAPTER C. ENROLLMENT AND RESPONSIBILITIES OF CONSUMER DIRECTED SERVICES AGENCIES

40 TAC §41.335

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§41.335. Documentation of Services Delivered.

(a) The CDSA must verify that the service provider:

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

(3) unless using an EVV system as required by Chapter 68 of this title (relating to Electronic Visit Verification (EVV) System), has a dated signature of the employer or DR on all documentation of services delivered.

(b) Documentation must include:

(1) time sheets for employees who are not required to document their time using an EVV system as required by Chapter 68 of this title;

(2) - (5) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005770
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 438-3734

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CHAPTER 68. ELECTRONIC VISIT VERIFICATION (EVV) SYSTEM

40 TAC §§68.101 - 68.103

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Chapter 68, §§68.101 - 68.103, concerning Electronic Visit Verification (EVV) System.

BACKGROUND AND PURPOSE

The purpose of the new chapter is to require a DADS contractor providing certain services and a Consumer Directed Services (CDS) option participant receiving certain services to use an electronic visit verification (EVV) system approved by DADS. In addition, the proposed new chapter requires a CDS agency (CDSA) to make an EVV system approved by DADS available to a CDS option participant.

An EVV system approved by DADS will verify that a scheduled visit of a person providing a service described in the proposed new chapter occurs as described in the service plan of the individual receiving the service. An EVV system also documents the precise time the scheduled visit begins and ends and the specific tasks performed. By requiring the use of an EVV system for certain services, DADS expects to realize an increase in the accuracy of service delivery documentation and a reduction in billing errors and fraudulent reporting of time worked.

SECTION-BY-SECTION SUMMARY

Proposed new §68.101, concerning application, describes the services for which an EVV system must be used.

Proposed new §68.102, concerning definitions, defines the terms used in this chapter.

Proposed new §68.103, concerning use and availability of EVV system, describes the persons and entities that must use an EVV system and the requirements for using an EVV system.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections are in effect, enforcing or administering the sections has potential implications relating to costs or revenues of state or local governments. By increasing the accuracy with which services are documented, EVV technology reduces the potential for funds to be lost to billing errors and fraudulent reporting of time worked. While it is not possible to accurately estimate the amount that may be realized by reducing losses related to administrative errors and fraudulent reporting, initial research and anecdotal evidence indicate that the potential savings have been significant enough to encourage service providers and state governments to implement and maintain EVV systems.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections could have an adverse economic effect on small businesses or micro-businesses, because mandating implementation of EVV may cause contractors to incur initial costs resulting from the purchase of necessary system components (e.g., hardware, software, etc). It is also possible that mandating implementation of EVV will cause contractors to incur recurring system maintenance costs and EVV transaction costs.

DADS' records indicate that approximately 2000 businesses provide the services subject to the proposed new sections. DADS does not have specific data regarding the number of these businesses that are formed for the purpose of making a profit, the number of their employees, or the amount of their gross receipts, which is necessary to determine how many of them meet the definitions of "small business" or "micro-business."

DADS cannot determine the specific initial or recurring costs that would be incurred by contractors because those costs vary significantly, depending on the type of system implemented by the provider.

Several options were considered in determining how to achieve the purpose of the proposed rules. Current statute does not mandate that DADS implement EVV technology in the affected programs. Therefore, DADS considered not imposing any new rules regarding EVV. DADS determined this option was not consistent with its responsibility as a steward of state and federal funds. DADS also considered the possibility of developing a proposal that would promote EVV as a readily available alternative to traditional timekeeping methods. This approach would encourage EVV use but would not mandate its implementation. DADS determined this option would not specifically address the need to limit funds lost through fraud. Finally, DADS considered the possibility of imposing a one percent rate cut on the programs in question. While this option would have resulted in cost reductions, DADS determined a one percent rate cut would have created greater impact on businesses and would not have addressed the need to improve timekeeping and payment accuracy.

PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, DADS Deputy Commissioner, has determined that, for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcing the sections is an increase in the accuracy of service delivery documentation and a reduction in billing errors and fraudulent time sheet reporting.

Mr. Weizenbaum anticipates that there will be an economic cost to persons who are required to comply with the new sections as noted above. The new sections will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Calvin Green at (512) 438-3765 in DADS' Center for Program Coordination. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-9R035, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing com-

ments, please indicate "Comments on Proposed Rule 9R035" in the subject line.

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new chapter affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§68.101. Application.

This chapter applies to the following services:

(1) in the Community Based Alternatives (CBA) Program, personal assistance services and in-home respite, as described in Appendix C of the CBA Program waiver application (found on the CBA Program page of the DADS website);

(2) in the Community Living Assistance and Support Services (CLASS) Program, residential habilitation and in-home respite, as described in Appendix C of the CLASS Program waiver application (found on the CLASS Program page of the DADS website);

(3) in the Consolidated Waiver Program (CWP):

(A) personal assistance services and in-home respite, as described in Appendix C of the CWP waiver application relating to the nursing facility level-of-care (found on the CWP page of the DADS website); and

(B) residential habilitation and in-home respite, as described in Appendix C of the CWP waiver application relating to the intermediate care facility for persons with mental retardation level-of-care (found on the CWP page of the DADS website);

(4) in the Deaf Blind with Multiple Disabilities (DBMD) Program, residential habilitation and in-home respite, as described in Appendix C of the DBMD Program waiver application (found on the DBMD Program page of the DADS website);

(5) in the Medically Dependent Children Program (MDCP), in-home respite and adjunct services, as described in Appendix C of the MDCP waiver application (found on the MDCP page of the DADS website); and

(6) in the Primary Home Care (PHC) Program:

(A) a community attendant service (CAS), as described in §47.3(3) of this title (relating to Definitions);

(B) a family care (FC) service, as described in §47.3(11) of this title; and

(C) a primary home care (PHC) service, as described in §47.3(20) of this title.

§68.102. Definitions.

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

(1) CDS option--Consumer directed services option. As defined in §41.103(8) of this title (relating to Definitions), a service delivery option in which a CDS option participant or legally authorized representative employs and retains a service provider and directs the delivery of a program service, including a service described in §68.101 of this chapter (relating to Application).

(2) CDS option participant--A person who receives a service described in §68.101 of this chapter using the CDS option.

(3) CDSA--Consumer directed service agency. As defined in §41.103(9) of this title, an entity that contracts with DADS to provide financial management services to a CDS option participant.

(4) Contractor--An entity that contracts with DADS to provide a service described in §68.101 of this chapter.

(5) DADS--The Department of Aging and Disability Services.

(6) DADS website--The website at www.dads.state.tx.us.

(7) EVV system--Electronic visit verification system. An electronic visit verification system that:

(A) allows a service provider to electronically document:

(i) the service recipient's identity;

(ii) the service provider's identity;

(iii) the date and time the service provider begins and ends the delivery of services;

(iv) the location of service delivery; and

(v) tasks performed by the service provider; and

(B) meets other guidelines described on the DADS website.

(8) Service provider--A person who provides a service described in §68.101 of this chapter and who is employed or contracted by:

(A) a contractor; or

(B) a CDS option participant.

§68.103. Use and Availability of EVV System.

(a) DADS may require a contractor, a CDSA, and a CDS option participant to use an EVV system in:

(1) each DADS region; or

(2) a part of one or more DADS regions.

(b) A contractor, CDSA, or CDS option participant required to use EVV:

(1) must use an EVV system approved by DADS to document the provision of a service described in §68.101 of this chapter (relating to Application), except under circumstances described in guidelines on the DADS website;

(2) must comply with DADS' requirements for documentation of information not documented by an EVV system in the provision of a service described in §68.101 of this chapter; and

(3) must comply with applicable federal and state laws regarding confidentiality of information regarding a person receiving a service described in §68.101 of this chapter.

(c) A contractor or CDSA required to use EVV:

(1) must ensure that documentation that may be generated by an EVV system is available for review in accordance with the contract; and

(2) must provide, upon request and at no charge, a copy of documentation that may be generated by an EVV system to DADS and any other federal or state agency authorized to have access to such documentation.

(d) A CDSA must make an EVV system approved by DADS available to a CDS option participant.

(e) A contractor may use confidential information, including the name and contact information of a person receiving a service described in §68.101 of this chapter from another contractor, only for the authorized purpose for which the confidential information was legally obtained.

(f) At any time, DADS may access an EVV system used by a contractor or CDS option participant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005767
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: November 21, 2010
For further information, please call: (512) 438-3734

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CHAPTER 91. HEARINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

40 TAC §§91.1 - 91.8

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Chapter 91, consisting of §§91.1 - 91.8, concerning hearings under the Administrative Procedure Act (APA).

BACKGROUND AND PURPOSE

The purpose of the new sections is to provide rules governing certain issues related to hearings under the APA, Texas Government Code, Chapter 2001. The rules of the former Texas Department of Human Services governing hearings under the APA were administratively transferred to HHSC in September 2004, as 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I, "Formal Appeals." This subchapter was repealed by HHSC and replaced with a new subchapter governing APA hearings, 1 TAC Chapter 357, Subchapter I, "Hearings Under the Administrative Procedure Act." The new HHSC rules state that certain hearing issues are governed by the rules of the "referring agency." DADS is a referring agency and these rules address issues related to APA hearings.

SECTION-BY-SECTION SUMMARY

Proposed new §91.1 contains the purpose statement for the chapter.

Proposed new §91.2 contains the definitions for the chapter.

Proposed new §91.3 contains the types of contested cases heard by the State Office of Administrative Hearings (SOAH) and certain requirements for those cases.

Proposed new §91.4 contains the types of contested cases heard by the HHSC Appeals Division and certain requirements for those cases.

Proposed new §91.5 contains the requirements governing the review of a proposal for decision in a contested case.

Proposed new §91.6 contains the requirements governing the issuance and finality of a decision in a contested case.

Proposed new §91.7 describes the requirements governing a motion for a rehearing in a contested case.

Proposed new §91.8 contains the requirements governing a judicial review of a final decision in a contested case.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections are in effect, enforcing or administering the new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections will not have an adverse economic effect on small businesses or micro-businesses, because the proposal does not impose new requirements on entities required to comply with the rules.

PUBLIC BENEFIT AND COSTS

Tom Phillips, DADS Chief Operating Officer, has determined that, for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcing the new sections is that DADS rules will address certain issues related to hearings under the APA originating at DADS. Unnecessary rules will be removed from the DADS rule base.

Mr. Phillips anticipates that there will not be an economic cost to persons who are required to comply with the new sections. The new sections will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Nancy Porter at (512) 438-4820 in DADS' Legal Services section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-006, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be either (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on

the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 006" in the subject line.

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§91.1. Purpose.

The purpose of this chapter is to describe procedures for hearings under the Administrative Procedure Act, Texas Government Code, Chapter 2001, relating to contested cases.

§91.2. Definitions.

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

(1) ALJ--Administrative law judge. Unless otherwise specified, ALJ means both a SOAH ALJ and an HHSC ALJ.

(2) Commissioner--The commissioner of DADS.

(3) Contested case--A contested case, as defined in Texas Government Code, §2001.003, to which DADS is a party.

(4) DADS--The Department of Aging and Disability Services.

(5) HHSC--The Texas Health and Human Services Commission.

(6) Party--DADS or another person named or admitted to participate in a contested case.

(7) PFD--Proposal for decision.

(8) SOAH--The State Office of Administrative Hearings.

(9) TAC--Texas Administrative Code.

§91.3. Contested Case Heard by SOAH.

(a) SOAH hears a contested case arising from the following DADS programs, services or activities:

(1) primary home care services;

(2) community attendant services;

(3) day activity and health services;

(4) the Community-Based Alternatives Program;

(5) the Community Living Assistance and Support Services Program;

(6) the Deaf-Blind Multiple Disabilities Program;

(7) the Medically Dependent Children Program;

(8) the Consolidated Waiver Program;

(9) social services authorized by Title XX of the Social Security Act (42 United States Code §§1397 - 1397f);

(10) In-Home and Family Support services for a person without a diagnosis of mental retardation;

(11) the Program of All-Inclusive Care for the Elderly;

(12) licensure, certification, or contracting of a nursing facility, including a determination related to the Resource Utilization Group Classification System or other utilization review;

(13) hospice services;

(14) licensure or certification of an intermediate care facility for persons with mental retardation;

(15) licensure of a nursing facility administrator;

(16) licensure of an assisted living facility;

(17) licensure of an adult daycare facility;

(18) licensure of a home and community support services agency;

(19) the nurse aide registry;

(20) the nurse aide training and competency evaluation program;

(21) the employee misconduct registry; and

(22) the medication aide program.

(b) Before a contested case described in subsection (a) of this section is transferred to SOAH:

(1) the HHSC Appeals Division has exclusive jurisdiction over the case;

(2) 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and this chapter govern the case; and

(3) the parties may conduct discovery in accordance with 1 TAC Chapter 357, Subchapter I.

(c) The director of the HHSC Appeals Division transfers a contested case described in subsection (a) of this section to SOAH upon request for a hearing date by either party.

(d) SOAH conducts hearings in accordance with 1 TAC Chapter 155 (relating to Rules of Procedure) and this chapter.

(e) A SOAH ALJ issues a PFD in accordance with 1 TAC Chapter 155.

(f) If a party files exceptions to a PFD or a reply to exceptions, the party must comply with 1 TAC Chapter 155.

§91.4. Contested Case Heard by HHSC.

(a) The HHSC Appeals Division hears a contested case other than one described in §91.3(a) of this chapter (relating to Contested Case Heard by SOAH).

(b) The HHSC Appeals Division conducts a hearing in accordance with 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and this chapter.

(c) An HHSC ALJ schedules a hearing upon request for a hearing date by either party.

(d) An HHSC ALJ issues a PFD in accordance with 1 TAC §357.497 (relating to Proposals for Decision, Exceptions, and Replies) within 60 days after the hearing record is closed.

(e) If a party files exceptions to a PFD or a reply to exceptions, the party must comply with 1 TAC §357.497.

§91.5. Review of Proposal for Decision.

(a) The commissioner or the commissioner's designee reviews a PFD issued by an ALJ, exceptions to the PFD, and a reply to the exceptions. The commissioner or commissioner's designee may change a finding of fact or conclusion of law, or may vacate or modify an order issued by the ALJ only if the commissioner or designee determines:

(1) that the ALJ did not properly apply or interpret applicable law, rule, policy provided to the ALJ, or prior administrative decision;

(2) that the ALJ relied on a prior administrative decision that is incorrect and should not be relied upon; or

(3) that a technical error in a finding of fact should be corrected.

(b) The commissioner or the commissioner's designee states in writing the specific reason and legal basis for a change made in accordance with this section.

§91.6. Issuance and Finality of Decision.

(a) After reviewing a PFD, the commissioner or the commissioner's designee issues a signed decision in a contested case. The decision either:

(1) adopts the findings of fact and conclusions of law contained in the PFD; or

(2) makes changes in accordance with §91.5 of this chapter (relating to Review of Proposal for Decision).

(b) The commissioner or the commissioner's designee mails the decision by first class mail and by certified mail, return receipt requested, to the parties or their representatives to their last known addresses. A party or representative is presumed to have been notified of the decision on the third day after the date on which the decision is mailed.

(c) In accordance with Texas Government Code, §2001.144, a decision in a contested case is final:

(1) if a motion for rehearing is not filed in accordance with §91.7 of this chapter (relating to Motion for Rehearing), on the last date a motion for rehearing can be filed in accordance with §91.7 of this chapter;

(2) if a motion for rehearing is filed in accordance with §91.7 of this chapter, on the date:

(A) an order overruling the motion for rehearing is signed; or

(B) the motion for rehearing is overruled by operation of law;

(3) if DADS finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision, on the date the decision is signed; or

(4) on the date specified in the decision, if all parties agree to the specified date in writing or on the record and the specified date is not before the date the decision is signed or later than the 20th day after the date the decision is signed.

(d) If a decision is final under subsection (c)(3) of this section, the commissioner or the commissioner's designee recites in the decision the finding made under subsection (c)(3) of this section and the fact that the decision is final and effective on the date signed.

§91.7. Motion for Rehearing.

A motion for rehearing is governed by Texas Government Code, §2001.146, as follows:

(1) A party may file a motion for rehearing. A motion for rehearing must be in writing and must be received by the commissioner or the commissioner's designee within 20 days after the date the party or party's representative is notified of a decision in accordance with §91.6(b) of this chapter (relating to Issuance and Finality of Decision).

(2) A party may file a reply to a motion for rehearing. A reply must be in writing and be filed with the commissioner or the commissioner's designee not later than the 30th day after the date on which the party or party's representative is notified of a decision in accordance with §91.6(b) of this chapter.

(3) The commissioner or the commissioner's designee acts on a motion for rehearing not later than the 45th day after the date on which the party or party's representative is notified of a decision in accordance with §91.6(b) of this chapter, or the motion for rehearing is overruled by operation of law.

(4) The commissioner or the commissioner's designee may by written order extend the time for filing a motion for rehearing or a reply, or for acting on a motion for rehearing under this section, except an extension may not extend the period for acting on a motion for rehearing beyond the 90th day after the date on which the party or the party's representative is notified of a decision in accordance with §91.6(b) of this chapter.

(5) If the commissioner or the commissioner's designee issues an order extending the time for filing a motion for rehearing or a reply, or for acting on a motion for rehearing under this section, the motion for rehearing is overruled by operation of law on the date specified in the order. If the order does not specify a date, the motion for rehearing is overruled by operation of law 90 days after the date on which the party or party's representative is notified of a decision in accordance with §91.6(b) of this chapter.

§91.8. Judicial Review.

(a) In accordance with Texas Government Code, §2001.145, a decision that is final under §91.6(c)(2) - (4) of this chapter (relating to Issuance and Finality of Decision) is appealable; however, a timely motion for rehearing is a prerequisite to appeal a decision that is final under §91.6(c)(2) of this chapter.

(b) In accordance with Texas Government Code, §2001.171, a person who has exhausted all administrative remedies at DADS and who is aggrieved by a final decision in a contested case is entitled to judicial review under Texas Government Code, Chapter 2001.

(c) In accordance with Texas Government Code, §2001.176(b)(3), filing a petition to initiate judicial review of a contested case does not affect the enforcement of a final decision for which the manner of review authorized by law is other than trial de novo.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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