

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 7. BANKING AND SECURITIES

### PART 2. TEXAS DEPARTMENT OF BANKING

#### CHAPTER 26. PERPETUAL CARE CEMETERIES

##### 7 TAC §§26.1, 26.2, 26.4, 26.5

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to 7 TAC §26.1, concerning perpetual care cemetery fees; §26.2, concerning maintenance of perpetual care cemetery records; and §26.4, concerning time requirements for ordering and setting a burial marker or monument in a perpetual care cemetery; and adopts new §26.5, concerning time requirements for issuance of a conveyance document for a cemetery plot, without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1418).

The amendments are adopted to update the rules, the need for which was discovered as a result of the recent review of these rules conducted in accordance with Government Code, §2001.039. New §26.5 is adopted to set a deadline that is consistent with the deadline set out in the department's Legal Opinion 98-48.

The amendments to §26.1 accomplish two things. The amendment deletes §26.1(a)(3). This change removes the ability of an insolvent permit holder to request a one-year reduction in its annual fee. In the last five years, the department has not received a request under the current rule and is of the opinion that each perpetual care cemetery should pay its cost of regulation.

The second change adds language to §26.1(b)(4) which ties the fee for examinations of new perpetual care cemetery certificate holders and the fee for extra examinations of perpetual care cemeteries to the fee charged for specialty examinations of other entities under §3.36(h) of this title. Examination rates are set by using the average salary for an average tenured employee. The Department resources necessary for these examinations are similar.

Additionally, the amendment allows these perpetual care cemetery examination fees to automatically change to mirror any change to the specialty examination fee for other entities under §3.36(h). Currently, the new and extra examination fee for perpetual care cemeteries, like the specialty examination fee for other entities under §3.36(h), is \$600 per day plus actual travel expenses. Therefore, this amendment does not change the current examination fees for perpetual care cemeteries.

The amendments to §26.2 simplify recordkeeping requirements for permit holders by allowing the maintenance of records in an

electronic database as long as the records can be retrieved without impeding the examination process. The amendments eliminate the need to retain certain records and reduce the retention time for others. A certificate holder's general file is no longer required to contain a copy of its certificate of authority, its most recent annual statement, previously examined amendments to the perpetual care fund trust agreement, all correspondence with the department for the previous three years, all examination reports for the previous three years, and cemetery price lists used before the prior examination. A certificate holder who has a limited scope examination or who is rated a 3 or lower is required to retain the signed acknowledgement by its board of directors to the examination report. All certificate holders are required to maintain a record of department approvals upon which the certificate holder relies, and a list of all its maps and plats.

The amendment to §26.4 adds a requirement in subsection (f) to maintain a list of all markers sold for the examination period. This information is needed to test and verify that timelines for marker ordering and setting are consistently met. Additionally a typographical error in §26.4(c)(2) has been corrected.

Adopted new §26.5 sets a deadline for issuing a conveyance document for a cemetery plot. The deadline is 20 days after the month in which the purchase contract is paid in full. The deadline is consistent with that established by department Legal Opinion 98-48. Placing the deadline in a rule clarifies that a violation of the deadline will subject the violator to enforcement action.

The Department received no comments regarding the proposed amendments and new rule.

The amendments and the new rule are adopted under Health and Safety Code §712.008(a), which provides that the commission may adopt rules to enforce and administer Chapter 712, including rules establishing fees to defray the costs of enforcing and administering Chapter 712. The amendment to §26.4 is also adopted under Health and Safety Code §712.008(b)(1), which states that the commission shall adopt rules establishing reasonable standards for timely placement of burial markers or monuments in a perpetual care cemetery. New rule §26.5 is also adopted under Health and Safety Code §711.012(a), which authorizes the Finance Commission to adopt rules to enforce and administer Health and Safety Code §711.038 relating to perpetual care cemeteries. Section 711.038 concerns the sale of plots and the issuance of certificates of ownership.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101431

A. Kaylene Ray  
General Counsel  
Texas Department of Banking  
Effective date: May 5, 2011  
Proposal publication date: March 4, 2011  
For further information, please call: (512) 475-1300



## CHAPTER 33. MONEY SERVICES BUSINESSES

### 7 TAC §§33.31, 33.33, 33.35

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to 7 TAC §33.31, concerning records that must be kept related to currency exchange transactions; §33.33, concerning what receipts must be issued related to currency exchange transactions; and §33.35, concerning records that must be kept related to money transmission transactions, without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1420).

These amendments arise from the recodification of federal FinCEN regulations under the Bank Secrecy Act (BSA). In an effort to increase efficiency, FinCEN's rules have been reorganized and renumbered into a new tenth chapter of Title 31 of the Code of Federal Regulations (CFR). Effective March 1, 2011, FinCEN's regulations transfer from 31 CFR Part 103 to 31 CFR Chapter X. The transfer and reorganization of the BSA regulations from Part 103 to Chapter X of Title 31 of the CFR does not alter any existing regulatory obligation or impose any new obligation. As a result of this transfer all references in 7 TAC Chapter 33 to 31 CFR Part 103 are now incorrect. The amendments update these references to conform to the new codification.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §151.102, which authorizes the Commission to adopt rules to administer and enforce Finance Code Chapter 151.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101432

A. Kaylene Ray  
General Counsel

Texas Department of Banking

Effective date: May 5, 2011

Proposal publication date: March 4, 2011

For further information, please call: (512) 475-1300



## PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

### CHAPTER 75. APPLICATIONS

#### SUBCHAPTER A. CHARTER APPLICATIONS

### 7 TAC §75.1

The Finance Commission of Texas (the "Commission") adopts amendments to Subchapter A, §75.1, concerning charter applications.

Section 75.1 is adopted without changes to the text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1422) and will not be republished.

In general, the purpose of the amendments is to update the rule with the Department's new website address.

The 30-day comment period ended April 4, 2011, during which no comments were received on the proposed rule amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapter 92.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101433

Douglas B. Foster

Commissioner

Texas Department of Savings and Mortgage Lending

Effective date: May 5, 2011

Proposal publication date: March 4, 2011

For further information, please call: (512) 475-1350



## CHAPTER 79. MISCELLANEOUS SUBCHAPTER H. CONSUMER COMPLAINT PROCEDURES

### 7 TAC §79.122

The Finance Commission of Texas (the "Commission") adopts amendments to Subchapter H, §79.122, concerning consumer complaint procedures.

Section 79.122 is adopted without changes to the text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1423) and will not be republished.

In general, the purpose of the amendments is to update the Department's new email address.

The 30-day comment period ended April 4, 2011, during which no comments were received on the proposed rule amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapter 13.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101434  
Douglas B. Foster  
Commissioner  
Texas Department of Savings and Mortgage Lending  
Effective date: May 5, 2011  
Proposal publication date: March 4, 2011  
For further information, please call: (512) 475-1350



CHAPTER 80. TEXAS RESIDENTIAL  
MORTGAGE LOAN ORIGINATOR  
REGULATIONS  
SUBCHAPTER B. PROFESSIONAL CONDUCT  
7 TAC §80.9

The Finance Commission of Texas (the "Commission") adopts amendments to Subchapter B, §80.9, concerning required disclosures.

Section 80.9 is adopted without changes to the text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1423) and will not be republished.

In general, the purpose of the amendment is to reconcile the rule to the Department's new website address and e-mail address. The amendment also updates the Residential Mortgage Loan Originator Disclosure form to be applicable to license types which, prior to the SAFE Act, were not required to be licensed and in anticipation of the April 1, 2011 change in compensation rules by the Federal Reserve.

The 30-day comment period ended April 4, 2011, during which no comments were received on the proposed rule amendments.

The amendments are adopted under Texas Finance Code §11.306, which authorizes the Commission to adopt mortgage broker rules as provided by Chapter 156 and under Finance Code §156.102.

The statutory provisions affected by the amendments are contained in Texas Finance Code, §156.004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101435  
Douglas B. Foster  
Commissioner  
Texas Department of Savings and Mortgage Lending  
Effective date: May 5, 2011  
Proposal publication date: March 4, 2011  
For further information, please call: (512) 475-1350



PART 5. OFFICE OF CONSUMER  
CREDIT COMMISSIONER  
CHAPTER 83. CONSUMER LOANS

SUBCHAPTER J. DUTIES AND AUTHORITY  
OF AUTHORIZED LENDERS

7 TAC §83.831

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §83.831, concerning Approval of Electronic Recordkeeping Systems and Optical Imaging Systems. The commission adopts the amendments without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1424).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §83.831 is to clarify the software review process conducted by the Office of Consumer Credit Commissioner (OCCC), one of the commission agencies. These revisions are in response to a finding in an audit of OCCC examination procedures. The suggested changes will provide conformance to the agency's current practices and are mostly technical in nature.

The OCCC circulated a draft of these revisions to interested stakeholders. In response to the agency's circulation of the draft, the agency received early or pre-comments prior to the original presentation of the rule to the commission. The OCCC believes that the informal comments received and the participation of stakeholders in the rulemaking process has greatly benefited the resulting rule. The amendments incorporate some of the industry's input and serve to refine the changes in certain areas.

The last two sentences of subsection (a) are being deleted, as much of this language is being relocated to new subsection (b). Subsection (b) specifically relates to the software review for licensees under Texas Finance Code, Chapter 342, Subchapters E and F. Section 83.831(b) requires these licensees to use a reviewed software system, maintain a manual recordkeeping system in compliance with §83.828, or use a proprietary software system not sold or distributed to other licensees aside from affiliates. The latter two options for a manual system or proprietary software system have been relocated from subsection (a).

New subsection (b) of §83.831 continues by stating that a list of reviewed non-proprietary software systems will be maintained on the OCCC's website, which places this agency policy into regulation. The final sentence of §83.831(b) has been carried over from subsection (a) and continues the requirement that licensees provide documentation to explain how required information is maintained within the system.

Section 83.831(c) has been added and states that Chapter 342, Subchapter G licensees (secondary mortgage lenders) are not required to submit electronic recordkeeping systems for review. These systems are reviewed during the course of the examination process.

Technical corrections have been made to subsection (d) (former subsection (b)) to maintain consistent language, add descriptive taglines, and provide clarification. In addition, new paragraph (3) outlines the responsibility for filing non-proprietary software systems. Section 83.831(d)(3) states that while a non-proprietary software vendor may make the filing on behalf of a licensee, the licensee is still responsible to ensure review of the system prior to use. Additionally, subsections (d), (e), and (f) have been relettered for formatting purposes.

The amendments to §83.831 are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas

Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the amendments to §83.831 are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101436

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: May 5, 2011

Proposal publication date: March 4, 2011

For further information, please call: (512) 936-7621



## CHAPTER 85. RULES OF OPERATION FOR PAWNSHOPS

### SUBCHAPTER D. OPERATION OF PAWNSHOPS

#### 7 TAC §85.402

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §85.402, concerning Recordkeeping. The commission adopts the amendments without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1426).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §85.402 is to clarify the software review process conducted by the Office of Consumer Credit Commissioner (OCCC), one of the commission agencies. These revisions are in response to a finding in an audit of OCCC examination procedures. The suggested changes will provide conformance to the agency's current practices and are mostly technical in nature.

The OCCC circulated a draft of these revisions to interested stakeholders. In response to the agency's circulation of the draft, the agency received early or pre-comments prior to the original presentation of the rule to the commission. The OCCC believes that the informal comments received and the participation of stakeholders in the rulemaking process has greatly benefited the resulting rule. The amendments incorporate some of the industry's input and serve to refine the changes in certain areas.

The term "reviewed" as opposed to an "approved" non-proprietary software system is being amended. The terminology change to "reviewed" is contained throughout the amendments for both rules in order to more appropriately reflect the OCCC's regulatory role concerning software systems. While the OCCC reviews non-proprietary software systems for compliance with the law and directs licensees to perform necessary corrections, licensees maintain responsibility to periodically check their software systems for accuracy and to seek updates to those systems. In other words, the OCCC's review of a non-proprietary system at one point in time does not provide any sort of waiver of the licensee's responsibility. Thus, the agency will

continue to conduct the same review of non-proprietary software systems as it has done in the past; however, the "review" language more accurately describes the responsibilities of both parties with regard to those systems.

Much of the language in §85.402(d) has been continued from the former rule, but for better clarity and compliance with *Texas Register* guidelines, the entire subsection is being deleted and replaced with new language. Section 85.402(d) requires licensees to use a reviewed software system, maintain a manual record-keeping system in compliance with subsection (f), or use a proprietary software system not sold or distributed to other licensees aside from affiliates. The latter two options for a manual system or proprietary software system have been maintained from former subsection (d). Additionally, the concept that all systems in place on the effective date of the rule do not have to resubmit the system to the agency has also been continued from the former rule.

Subsection (d) of §85.402 contains a statement regarding a list of reviewed non-proprietary software systems being maintained on the OCCC's website, which places this agency policy into regulation. The final sentence of §85.402(d) requires that licensees provide documentation to explain how required information is maintained within the system.

Technical corrections have been made to subsection (e) to maintain consistent terminology and provide clarification. In addition, paragraph (4) of subsection (e), relating to removal of a system from the agency's list, is being deleted and replaced with new language. In addition to the continued use of parallel phrasing to provide consistency, the changes to §85.402(e)(4) allow a pawnbroker or vendor time to make corrections prior to removal from the list, if the additional time will not harm pledgors.

Texas Finance Code, §371.006 contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the effective date for the changes included in this adoption will be June 6, 2011.

The amendments to §85.402 are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the amendments to §85.402 are contained in Texas Finance Code, Chapter 371.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101437

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: June 6, 2011

Proposal publication date: March 4, 2011

For further information, please call: (512) 936-7621



## TITLE 10. COMMUNITY DEVELOPMENT

## PART 6. TEXAS DEPARTMENT OF RURAL AFFAIRS

### CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

#### SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

##### 10 TAC §255.5

The Texas Department of Rural Affairs (TDRA) adopts an amendment to §255.5, concerning the Disaster Relief Fund, without changes to the proposal published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1210). The adopted amendment sets a funding priority for the Disaster Relief Fund.

In accordance with §2001.039 of the Texas Government Code, the agency has reviewed the Texas Administrative Code, Title 10, Part 6, Chapter 255. The agency has determined that at this time revisions need to be made to §255.5. In addition, the agency published for public comment proposed amendments covering §255.5.

No comments were received.

The amendment is adopted under the Texas Government Code §487.052, which provides the Texas Department of Rural Affairs with the authority to adopt rules and administrative procedures to carry out the provisions of Chapter 487 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2011.

TRD-201101447

Howard G. Baldwin, Jr.

Interim Executive Director

Texas Department of Rural Affairs

Effective date: May 8, 2011

Proposal publication date: February 25, 2011

For further information, please call: (512) 936-6734



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 164. PHYSICIAN ADVERTISING

##### 22 TAC §§164.2, 164.4, 164.6

The Texas Medical Board (Board) adopts amendments to §164.2, concerning Definitions, §164.4, concerning Board Certification, and §164.6, concerning Required Disclosures on Websites, without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1216) and will not be republished.

The amendment to §164.2 adds definitions for applicants, application, board, and certifying board.

The amendment to §164.4 establishes the process for applicants to have certifying boards approved by the Medical Board for purposes of advertising.

The amendment to §164.6 provides that this section applies only to licensees who bill for services provided via the Internet.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101438

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 5, 2011

Proposal publication date: February 25, 2011

For further information, please call: (512) 305-7016



## CHAPTER 166. PHYSICIAN REGISTRATION

##### 22 TAC §166.7

The Texas Medical Board (Board) adopts new §166.7, concerning Report of Impairment on Registration Form, without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1217) and will not be republished.

The new section provides that if a licensee has an impairment that affects a licensee's ability to actively practice medicine, the licensee shall be given the opportunity to place the license on retired status, convert the license to an administrative medicine license, cancel the license, or be referred to the Texas Physician Health Program.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The new rule is also authorized by Texas Occupations Code, §156.001 et seq., §164.061, and §167.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101439

Mari Robinson, J.D.  
Executive Director  
Texas Medical Board  
Effective date: May 5, 2011  
Proposal publication date: February 25, 2011  
For further information, please call: (512) 305-7016



## CHAPTER 175. FEES AND PENALTIES

### 22 TAC §175.1, §175.2

The Texas Medical Board (Board) adopts amendments to §175.1, concerning Application Fees, and §175.2, concerning Registration and Renewal Fees, without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1218) and will not be republished.

The amendment to §175.1 establishes the fee for the application of a certifying board evaluation at \$200.

The amendment to §175.2 establishes the fee for the application for certifying board evaluation renewals at \$200.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §153.051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101440  
Mari Robinson, J.D.  
Executive Director  
Texas Medical Board  
Effective date: May 5, 2011  
Proposal publication date: February 25, 2011  
For further information, please call: (512) 305-7016



## CHAPTER 185. PHYSICIAN ASSISTANTS

### 22 TAC §185.4, §185.6

The Texas Medical Board (Board) adopts amendments to §185.4, concerning Procedural Rules for Licensure Applicants, and §185.6, concerning Annual Renewal of License, without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11470) and will not be republished.

The amendment to §185.4 corrects the name for the Accreditation Review Commission on Education for the Physician Assistant, Inc. (ARC-PA) and corrects a rule citation.

The amendment to §185.6 provides that CME may be approved by the board for course credit.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §204.101, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101441  
Mari Robinson, J.D.  
Executive Director  
Texas Medical Board  
Effective date: May 5, 2011  
Proposal publication date: December 24, 2010  
For further information, please call: (512) 305-7016



## CHAPTER 187. PROCEDURAL RULES

### SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW

#### 22 TAC §§187.70 - 187.72

The Texas Medical Board (Board) adopts amendments to §187.70, concerning Purposes and Construction, §187.71, concerning Hearing Before a Panel of Board Representatives, and §187.72, concerning Decision of the Panel, without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1220) and will not be republished.

The amendment to §187.70 provides that the Board may automatically suspend the license of a physician who has been found guilty of certain drug-related felonies by a trier of fact.

The amendment to §187.71 provides that the Board may conduct a hearing in order for the purpose of determining whether to automatically suspend the license of a physician who has been found guilty of certain drug-related felonies by a trier of fact.

The amendment to §187.72 provides that if a disciplinary panel of the board elects to automatically suspend the license of a physician that the order shall be considered administratively final for purposes of appeal. In addition, if a panel recommends the automatic suspension of a license, the panel shall also either offer an order with terms on how the suspension may be probated or that the physician's license should be revoked.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: gov-

ern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §164.057, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101442

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 5, 2011

Proposal publication date: February 25, 2011

For further information, please call: (512) 305-7016



## CHAPTER 196. VOLUNTARY RELINQUISHMENT OR SURRENDER OF A MEDICAL LICENSE

The Texas Medical Board (Board) adopts an amendment to §196.1, concerning Relinquishment of License, and the repeal of §196.3, concerning Surrender Associated with Impairment, without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1221) and will not be republished.

The amendment to §196.1 provides that in addition to voluntary relinquishment, a licensee may request cancellation of a license.

The repeal of §196.3 repeals this section as licensees may no longer surrender their license due to an impairment through a confidential rehabilitation order.

No comments were received regarding adoption of the rules.

### 22 TAC §196.1

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.061, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101443

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 5, 2011

Proposal publication date: February 25, 2011

For further information, please call: (512) 305-7016

◆ ◆ ◆  
**22 TAC §196.3**

The repeal is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The repeal is also authorized by §164.061, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101444

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 5, 2011

Proposal publication date: February 25, 2011

For further information, please call: (512) 305-7016



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### 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 (commission), on behalf of the Department of State Health Services (department), adopts new §§200.1 - 200.10, concerning the reporting of healthcare-associated infections (HAI). Sections 200.3, 200.4, 200.6 and 200.7 are adopted with changes to the proposed text as published in the October 22, 2010, issue of the *Texas Register* (35 TexReg 9471). Sections 200.1, 200.2, 200.5, and 200.8 - 200.10 are adopted without changes, and the sections will not be republished.

#### 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 (other than pediatric and adolescent 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.

#### COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were one trade association and individuals on behalf of three facilities. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §200.1(11), the Texas Hospital Association (THA) commented that the department should amend the definition to read: "General hospital--A hospital licensed as a general hospital under Health and Safety Code, Chapter 241, or a hospital that provides surgical or obstetrical services and that is maintained or operated by the state."

Response: The commission disagrees with this comment and explains the definition is referencing the definition as found in current statute (Health and Safety Code Chapter 98). No change was made to the rule as a result of this comment.

Comment: Concerning §200.1(22), the THA and Cedar Park Regional Medical Center commented that the department should amend the definition to read: "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 any critical care unit. If such a hospital does not have an intensive care unit listed in the Annual Survey of Hospitals published by the American Hospital Association, the Texas Department of State Health Services and the THA (or their respective successors), the hospital shall be deemed not to have a special care setting under the terms of these rules."

Response: The commission disagrees with the comment. "Special care setting" is defined in legislation and is codified in Health and Safety Code, Chapter 98. However, the department through education and training will refer to the NHSN for specific examples of special care setting so that reporting will be consistent with NHSN guidelines. No change was made to the rule as a result of this comment.

Comment: Concerning §200.4(b), the THA and Cedar Park Regional Medical Center commented that the subsection should be amended to remove the language referring to ambulatory surgical centers, from reporting certain events in special care settings.

Response: The commission agrees with the comment. The proposed language "and ambulatory surgical centers" has been removed from the rule.

Comment: Concerning §200.4(c), the THA commented that language should be added to the subsection that states "other than pediatric and adolescent hospitals."

Response: The commission agrees with the comment and the language was added to the rule, as well as clarifying reporting exceptions for hospitals or ambulatory surgical centers. For consistency, the language "other than a pediatric and adolescent hospital" was also added to §200.4(d).

Comment: Concerning §200.4(d), the THA commented that the language should be changed to read: "A general hospital other than a pediatric and adolescent 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, subject to §200.4(d), HAI data relating to all of the three surgical procedures most frequently performed at the facility that are also listed by the National Healthcare Safety Network (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. A general hospital or ambulatory surgical center is not required to report under this subsection if the top three procedures specified in subsection (d) are not listed by NHSN as reportable."

Response: The commission disagrees with this comment, and the rule will not be changed as a result of this comment. The intent is to assure that the public has access to HAI reporting data even if facilities perform few procedures.

Comment: Concerning §200.4(f), the THA commented that language should be changed to read as follows: "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, subject to §200.4(f), 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). A pediatric and adolescent hospital is not required to report under this subsection if the top three procedures specified in subsection (f) are not listed by NHSN as reportable."

Response: The commission disagrees with this comment. The intent is to assure that the public has access to HAI reporting

data even if facilities perform few procedures. No change was made to the rule as a result of this comment.

Comment: Concerning the rules in Chapter 200 of this title, the THA commented that the department should consider adding language to the rules to clarify that reporting applies to hospital-acquired infections and not to infections present on admission.

Response: The commission disagrees with this comment. The definition of Healthcare-associated infection in §200.1(13), conforms with the definition as it is found in the Health and Safety Code, Chapter 98. No change is indicated for revision to the rules in this chapter at this time.

Comment: Concerning the proposed rules in general, the THA commented that the department should consider providing more time between the effective date of the rules and the data-collection deadlines, so as to allow affected hospitals and ambulatory surgical centers sufficient opportunity to enroll in a secure electronic interface and collect their first three months worth of data.

Response: The commission disagrees with this comment. Texas facilities have been aware of HAI reporting requirements starting in 2007. The department believes that the rules allow for sufficient time to enroll and report in accordance with state statute. No change is required to the rules in this chapter at this time.

Comment: Concerning §200.3(e)(2), Children's Memorial Hermann Hospital and Cedar Park Regional Medical Center commented on the paragraph stating that the facility treating the patient who did not perform the surgery must report to the department the infection and name of the facility alleged to have performed the procedure. They commented that this will add an additional burden to the reporting facility that did not perform the original surgical procedure.

Response: The commission agrees with this comment. New language reflecting facility procedural reporting was added and the requirement to report to the department was deleted.

Comment: Concerning the rules in general, Cedar Park Regional Medical Center commented that facilities that might share a Centers for Medicare and Medicaid Services (CMS) number would need to contact the Centers for Disease Control and Prevention (CDC) instead of the department to acquire individual numbers for each facility site and/or licensure.

Response: The commission agrees that the facilities that share a CMS number will need separate facility identification numbers. The department disagrees that the facility will need to contact the CDC. The CDC has not been designated as the secure electronic interface.

Comment: Concerning the rules in general, Cedar Park Regional Medical Center commented that the alternative reporting for facilities performing a monthly average of less than 50 on the indicated procedures could have an added burden by complying with this language.

Response: The commission disagrees with this comment and the rules will not be changed. This is required by Health and Safety Code, Chapter 98.

Comment: Concerning §200.4(e)(3) and §200.6(b)(3), Cedar Park Regional Medical Center commented that there is a typographical error concerning medical terms.

Response: The commission agrees with this comment and added "Ventriculoperitoneal shunt procedures (Ventricular shunt operations)" and "ventriculoperitoneal" for correction.

Comment: Concerning §200.7(a), Baylor Regional Medical Center - Grapevine commented that for implant cases, the correction period should be extended to 15 months from the month of the procedure to allow for post discharge reporting.

Response: The commission agrees with this comment. The graphic of applicable deadlines regarding surgical site infections related to implants was revised.

Comment: Baylor Regional Medical Center - Grapevine commented that facilities that perform low volumes of reportable procedures may have a higher risk of complications and request that data be included to indicate this as well as adding comments regarding the low volume of reported procedures.

Response: The commission disagrees with the comment and the rule will not be changed. There is a mechanism for comments to be posted by individual facilities as part of §200.9(b), and may be used for the purpose of citing the low volume of certain procedures reported. In addition, the reported denominator data are another avenue that will reflect the low number of procedures.

Comment: Baylor Regional Medical Center - Grapevine commented that facility contact information should be published to facilitate hospital to hospital communications regarding infections that may be a result of a procedure performed at a different facility.

Response: The commission disagrees with this comment as it relates to §200.2(e) and the rule will not be changed. The posting of facility contact data from over 1000 facilities is not a function of the department. This information is readily available through other sources.

A minor revision to §200.3(c)(2) clarifies that a facility shall contact the designated electronic interface administrator instead of the department to receive an identification number for reporting HAI data.

#### STATUTORY AUTHORITY

The new sections are adopted 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.

#### §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 designated electronic interface administrator 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 notify the facility that performed the procedure, document the notification, and maintain this documentation for audit purposes. The facility that performed the procedure shall verify the data related to the SSI and shall report the infection in the designated electronic data interface according to the surveillance methods described by the interface 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 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, other than pediatric and adolescent hospitals, and ambulatory surgical centers (except those hospitals or ambulatory surgical centers 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, other than a pediatric and adolescent 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) Ventriculoperitoneal shunt procedures (Ventricular shunt operations), including revision and removal of 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.

#### §200.6. 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 ventriculoperitoneal 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2011.

TRD-201101418

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: May 4, 2011

Proposal publication date: October 22, 2010

For further information, please call: (512) 458-7111 x6972



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

#### **CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS**

##### **37 TAC §163.34**

The Texas Board of Criminal Justice adopts the amendments to §163.34, Carrying of Weapons, without changes to the text as proposed in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1261).

The amendments are necessary to conform the rule to state and federal law.

No comments were received.

The amendments are adopted under Texas Government Code §509.003 and Texas Occupations Code §1701.257.

Cross Reference to Statutes: Texas Government Code §492.013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2011.

TRD-201101373

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: May 2, 2011

Proposal publication date: February 25, 2011

For further information, please call: (936) 437-2141



##### **37 TAC §163.46**

The Texas Board of Criminal Justice adopts the amendments to §163.46, Allocation Formula for Community Corrections Program, without changes to the text as proposed in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1263).

The amendments are necessary to clarify the existing procedures.

No comments were received.

The amendments are adopted under Texas Government Code §509.011.

Cross Reference to Statutes: Texas Government Code §509.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2011.

TRD-201101370

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: May 2, 2011

Proposal publication date: February 25, 2011

For further information, please call: (936) 437-2141



## CHAPTER 195. PAROLE

### 37 TAC §195.61

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §195.61, Method of Payment for Parole Supervision and Administrative Fees, without changes to the text as proposed in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1264).

The amendments add another method for collecting the fee contingent upon the approval of the Texas Department of Criminal Justice.

No comments were received.

The amendments are adopted under Texas Government Code §508.182.

Cross Reference to Statutes: Texas Government Code §492.013; Texas Code of Criminal Procedure Article 42.037.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2011.

TRD-201101371

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: May 2, 2011

Proposal publication date: February 25, 2011

For further information, please call: (936) 437-2141



### 37 TAC §§195.71 - 195.78

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §§195.71 - 195.78, concerning drug and alcohol testing of offenders under supervision of the Texas Department of Criminal Justice Parole Division, without changes to the text as

proposed in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1264).

The amendments are nonsubstantive and clarify the current procedures.

No comments were received.

The amendments are adopted under Texas Government Code §508.184.

Cross Reference to Statutes: Texas Government Code §492.013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2011.

TRD-201101375

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: May 2, 2011

Proposal publication date: February 25, 2011

For further information, please call: (936) 437-2141



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

#### CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

##### SUBCHAPTER F. DEAF AND HARD OF HEARING DRIVER IDENTIFICATION PROGRAM

### 40 TAC §§109.601, 109.603, 109.605, 109.607, 109.609, 109.611

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), adopts new rules to Title 40, Part 2, Chapter 109, Office for Deaf and Hard of Hearing Services, Subchapter F, Deaf and Hard of Hearing Driver Identification Program, §§109.601, 109.603, 109.605, 109.607, 109.609 and 109.611, for the Office for Deaf and Hard of Hearing Services. The new rules are adopted without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1271) and will not be republished.

DARS adopts new Subchapter F, §109.601, Purpose; §109.603, Statutory Authority; §109.605, Definitions; §109.607, Eligibility; §109.609, Deaf and Hard of Hearing Driver Visor Identification Card; and §109.611, Consumer Confidentiality, to establish rules to govern its compliance with Texas Human Resources Code Chapter 81, §81.019, which requires DARS to design and provide for the issuance of a symbol or other form of identification that may be attached to a motor vehicle regularly operated by a person who is deaf or hard of hearing.

No comments were received regarding adoption of the rules.

The new rules are adopted pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2011.

TRD-201101391

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: May 3, 2011

Proposal publication date: February 25, 2011

For further information, please call: (512) 424-4050



## PART 20. TEXAS WORKFORCE COMMISSION

### CHAPTER 815. UNEMPLOYMENT INSURANCE

#### SUBCHAPTER F. EXTENDED BENEFITS

##### 40 TAC §815.170, §815.171

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 815, relating to Unemployment Insurance, *without* changes, as published in the February 18, 2011, issue of the *Texas Register* (36 TexReg 909):

Subchapter F. Extended Benefits, §815.170 and §815.171

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 815 rule amendments is to adjust unemployment eligibility periods, as necessary, to maximize receipt of 100 percent federally shared extended unemployment benefits in accordance with the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312); the American Recovery and Reinvestment Act of 2009, enacted February 17, 2009 (P.L. 111-5), Division B, Title II, relating to Assistance for Unemployed Workers and Struggling Families, §2005. This authority was granted to the Commission under House Bill (HB) 4586, 81st Texas Legislature, Regular Session (2009).

The Commission must take this action in order to continue paying unemployed individuals who are exhausting their regular and emergency unemployment benefits. During this period of high, sustained unemployment, these 100 percent federally shared extended benefits are vital to out-of-work Texans who are struggling to pay their bills while seeking work. These benefits also serve as a much-needed stabilizing factor in local economies.

## PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

### SUBCHAPTER F. EXTENDED BENEFITS

The Commission adopts the following amendments to Subchapter F:

§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.

Section 815.170(b)(1) - (2) adds an additional calendar year in the comparison period when determining whether there is a state "on" indicator for the purposes of paying extended benefits.

To pay extended benefits, a state must reach a trigger related to statewide unemployment. Under authority granted by the legislature, Texas may use a temporary trigger based upon its Total Unemployment Rate (TUR).

If the TUR average equals or exceeds 6.5 percent and is at least 110 percent of the corresponding three-month period in either or both of the prior two calendar years (look-back period), a state must offer 13 weeks of extended benefits. If the average TUR equals or exceeds 8 percent and meets the same 110 percent test, 20 weeks of extended benefits must be available.

As part of the TUR trigger methodology, the U.S. Department of Labor is instructed to compute the three-month average TUR each week and compare it to the same look-back period in either or both of the two preceding calendar years.

During 2011, the reference months for Texas will be in calendar years 2009 and 2010. The unemployment rates--and therefore the moving three-month average for both 2009 and 2010--are likely to be closer to, or even higher than, the rate for the equivalent period in 2011. Texas will need to look back three years, to 2008, to meet the 110 percent criterion and remain triggered on extended benefits. Congress recognized this dilemma; P.L. 111-312 allows states to amend their law and temporarily add a third year to the look-back period to take advantage of continued 100 percent federal funding of extended benefits.

§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.

Section 815.171(a) adds a reference to §815.170(b) to indicate that a high unemployment period also exists under the new three-year look-back option.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The rules are adopted under Texas Labor Code §301.0015, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Labor Code, Title 4, Subtitle A, Texas Unemployment Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2011.

TRD-201101380

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch

Texas Workforce Commission

Effective date: May 2, 2011

Proposal publication date: February 18, 2011

For further information, please call: (512) 475-0829

