

22 TAC §577.2

The Texas Board of Veterinary Medical Examiners adopts an amendment to §577.2, concerning Meetings by the Board, with-out changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6432) and will not be republished.

The amendment to §577.2 clarifies and conforms the rule to the Open Meetings Act, current practice and Roberts Rules of Order that decisions made by the Board must be made by a majority of the members present and voting. The amendment provides greater clarification to the general public and licensees as to the number of votes necessary for an item to be decided by the Board.

The Board received several comments stating that they did not believe the Board had the statutory authority to change the rule from five members required to vote in favor of an item before the Board as the Veterinary Licensing Act (Act) requires the Board to consist of six licensed veterinarians and three public members, thereby requiring the Board to be primarily controlled by licensed veterinarians. The Board respectfully disagrees. The Act mandates who are the members of the Board. However, the Act does not mandate how a quorum is counted. The Open Meetings Act, Texas Government Code, §551.001(6) defines quorum as a majority of the governing body, unless otherwise defined by applicable law. According to case law and Texas Attorney General Opinions GA-0554 (2007) and GA-0412 (2006), absent an express provision to the contrary, a proposition is carried in a deliberative body by a majority of the legal votes cast, a quorum being present. In addition, the Board received a comment suggesting that the Board has the ability to meet by telephone conference call or videoconference, therefore the rule is unnecessary, with the effect of reducing the potential number of affirmative votes to pass a proposition. The Board respectfully disagrees. The Open Meetings Act specifically does not allow videoconferencing or telephone conference calls for Board meetings.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

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.

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 146. TRAINING AND REGULATION OF PROMOTORES OR COMMUNITY HEALTH WORKERS

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§146.1 - 146.4, 146.6 - 146.10, new §§146.5, 146.11 and 146.12, and the repeal of §146.5, concerning the regulation of training and certification of promotores or community health workers. The amendments to §§146.1, 146.2, 146.4, 146.6 - 146.8, and new §146.12 are adopted with changes to the proposed text as published in the April 23, 2010, issue of the *Texas Register* (35 TexReg 3189). The amendments to §§146.3, 146.9, 146.10, new §146.5 and §146.11, and the repeal of §146.5, are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments, repeal, and new sections are necessary to comply with Health and Safety Code, Chapter 48, which requires the department to establish minimum standards for the certification of promotores or community health workers.

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). Sections 146.1 - 146.10 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

Amendments to §§146.1 - 146.4 add definitions and clarify other definitions; reflect changes to purpose, tasks and terms of the advisory committee; who is eligible for training and certification; remove language specific to the contents of an application which may be included in program policy or procedure, reflect consistent references to the department, and clarify opportunity for reapplication following expiration of a certificate.

The repeal of §146.5 allows for better organization of the rules concerning application requirements.

The amendment to §146.6 concerns application requirements and procedures for sponsoring organizations, reflect consistent references to the department, and clarify opportunity for reapplication following expiration of a certificate. The amendment to §146.7 provides clarification related to types of certification and applicant eligibility requirements. Amended §146.8 reflects standards for approved curriculum for community health workers or instructors in the program. The amendments to §146.9 and §146.10 outline requirements for certificate renewal and continuing education.

New §§146.5, 146.11 and 146.12 provide clarification on reporting of change in name and address; information related to professional and ethical standards; and information related to violations, complaints, and subsequent actions respectively.

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 four members of the Promotor(a) or Community Health Worker Training and Advisory Committee (committee), and two individ-

uals. With one exception noted below, 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 the overall rule changes, one commenter expressed concern that there was a "watering down" of the overall structure of the rules and the role of the committee and noted a relaxing of the rules which in some cases was not the original intent of the current and previous committees.

Response: The commission disagrees. The amendments, repeal, and new rules in 25 TAC, Chapter 146, will clarify the rules and improve the ability of promotores or community health workers to obtain the training and certification established by Health and Safety Code, Chapter 48. No changes were made to the rules as a result of this comment.

Comment: Concerning consideration of use of the term "training" in the proposed rules, one commenter noted that an animal is "trained" while a person is offered and receives an "education."

Response: The commission declines to make a change related to this comment. The use of the term "training" is consistent with Health and Safety Code, Chapter 48.

Comment: Concerning the definition of "promotor(a) or community health worker" in §146.1, one commenter questioned who rewrote the definition (a person or a committee) and whether other definitions were considered from an evidence-based community health worker practice. One commenter requested the inclusion of cultural mediation in the proposed definition as an important element from the current definition. Another commenter noted that the proposed definition was excellent but requested the addition of patient navigation and follow-up and participation in clinical research to the range of activities.

Response: The commission agreed to most comments related to the definition of promotor(a) or community health worker. Revisions were made to the proposed definition in §146.1(12) to include cultural mediation, and patient navigation/follow-up, and participation in clinical research. The proposed definition was based on input received from stakeholders during the development of the proposed rules and included a review of definitions from multiple state and national resources related to community health workers.

Comment: One commenter noted that the proposed rules needed a definition of distance learning as reference to distance learning is noted in §146.8(b)(14) and (c)(13) and referenced a definition provided by the United States Distance Learning Association (USDLA).

Response: The commission agrees. The USDLA definition of distance learning was added in §146.1(8).

Comment: Concerning §146.2(c), the purpose and tasks of the committee, two commenters requested that the proposed rules reflect that the committee continue to review instructor applications. The commenter noted that the committee represents community health workers and instructors and that the elimination of the assignment to evaluate instructor applications limits the committee role to just one function (that of reviewing applications from sponsoring organizations). The commenter also expressed concern that eliminating committee members from the process of evaluating instructor applications results in department staff serving in a dual role - that of program administrator and decision maker for instructor applicants.

Response: The commission disagrees. The committee's purpose and tasks include advising the Executive Commissioner concerning rules to implement standards adopted under the Health and Safety Code, Chapter 48, relating to the training and regulation of persons working as promotores or community health workers, advising the department concerning guidelines and requirements relating to training and certification of promotores or community health workers, instructors, and sponsoring organizations, as well as reviewing applications from sponsoring organizations to recommend certification to the department if program requirements are met. It is the responsibility of the department to approve any application in compliance with program requirements and which properly documents applicant eligibility, unless disapproved due to unethical conduct, conviction of a crime directly related to the duties and responsibilities as a promotor(a)/community health worker, or instructor, or an incapacity to practice with reasonable skill, competence, and safety to the public. No changes were made to the rule as a result of comments.

Comment: Concerning the repeal of §146.5 which related to application requirements and procedures for instructors, one commenter inquired whether this section was being replaced by §146.1, which defines a community health worker instructor.

Response: Concerning the need for clarification, the commission responds that the repeal of §146.5 that concerned application procedures for instructors has now been included in amended §146.4 which allows for better organization of the rules for applications requirements. No change was made to the rules as a result of this comment.

Comment: Concerning §146.7, related to types of certificates and applicant eligibility, one commenter supported the change that qualified individuals with not less than 1000 hours of experience in the previous six years from the date the application is signed may apply for instructor certification based on their experience, noting that this gives individuals with extensive instruction experience the opportunity to apply to become a certified instructor. The commenter noted the need to expand the pool of qualified instructors to help increase the number of well-trained and qualified community health workers. Another commenter noted that there are references to instructors of community health workers in two different sections of the rules where one appeared to be a definition of the role and later an exception for the role. The commenter also noted that §146.7(c) allows the department to make exceptions for persons with "experience training individuals" and questioned what the experience was to be, over what period of time, and with whom.

Response: The commission agrees with the comment supporting the rule that qualified individuals with not less than 1000 hours of experience in the previous six years from the date the application is signed may apply for instructor certification based on their experience. The commission responds to clarify that §146.7(c) states that a person with not less than 1000 cumulative hours instructing or training promotores, community health workers, or other health care professional in the previous six years (from the date the application is signed) may be issued a certificate of competence by the department. Section 146.7(f) also notes that the department may also certify individuals completing an instructor/training program by an approved sponsoring organization. No change was made to the rule as a result of these comments.

Comment: Concerning standards for the approval of curricula in §146.8 and continuing education requirements in §146.10, one

commenter stated that online trainings provided by the department for continuing education units in other areas, such as Texas Health Steps online provider education modules be accepted as the department certified continuing education hours (CEUs) for community health workers. The commenter also requested that the department certified CEUs be provided by teleconference so that rural staff who do not have easy access to local trainings may obtain their department certified CEUs. Another commenter questioned reference to "real time" for distance learning technology in proposed §146.8(b)(14) noting this limits learning to certain times, places, and spaces.

The commenter also questioned why the proposed rules do not include requirements for instructors teaching via distance learning to have any previous distance learning curriculum or teaching certification (as found in higher education settings). Another commenter noted the complexity of educating promotores with diverse educational levels and requested that the rules include a 2-tier curriculum similar to the following:

(1) Tier 1--100 hour curriculum (10 hours in each of the eight core competencies with an additional 20 hours of field work) for promotores wishing to provide educational and outreach services only in their community.

(2) Tier 2--Current 160 hour curriculum (20 hours in each of the eight core competencies with an opportunity to transfer for credit to an educational institution or sponsoring agency) for a career in public health and case management.

Response: The commission agrees with most of the comments. Section 146.8(b)(14) and (c)(13) include a requirement that all 160-hour curricula and continuing educations specify the method or methods by which training will be delivered, including class room instruction and use of distance learning. Reference to "real time" was removed from §146.8(b)(14). Section 146.10(b)(1)(A) notes that at least 5 hours of continuing education shall be satisfied by participation in a department certified training program, including a training program sponsored or provided by the department (including Texas Health Steps online provider education modules where content relates to one or more of the core competencies). The commission disagrees with the inquiry to include requirements for instructors teaching via distance learning to have some type of certification in developing distance learning curriculum or teaching via distance learning. Sponsoring organizations of training programs include community-based organizations as well as community colleges or other higher education settings, therefore, application of standards within a higher education setting may not be applicable to all approved training programs. No changes were made to the rules as a result of this comment. The commission also declined to make changes to the rules in order to establish an additional curriculum tier of 100 hours as the department does not currently have the capacity to adopt this type of educational system within the Promotor(a) or Community Health Worker Training and Certification Program.

Comment: One commenter noted that the inclusion of new §146.11 concerning professional and ethical standards was needed and supported the addition to the rules.

Response: The commission agrees and no change was made to the rule as a result of this comment.

Minor changes maintain consistency with Health and Safety Code, Chapter 401, throughout the section; revise outdated references for electronic processing; and clarify the intent of the section with minor grammatical changes.

Revisions have been made to provide consistency of terms to further clarify the intent of the sections with minor grammatical changes; update information to maintain rules that provide consistency; and delete outdated references.

An outdated website was deleted in §146.1(10); and changes in §146.2(n), §146.4(c) - (d), §146.6(c) - (d), §146.7(h), §146.8(b) - (c), and §146.12(b) were made for clarification on procedures for the committee report, applications, eligibility requirements, materials submitted for approval of curricula, and criminal convictions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§146.1 - 146.12

STATUTORY AUTHORITY

The amendments and new rules are authorized under Health and Safety Code, §48.003, which requires the Texas Board of Health (board) to adopt rules that provide minimum standards and guidelines on training; §48.002, which allows the board to provide for exemption from certification by rule; §11.016, which allows the board to appoint advisory committees to assist the board in performing its duties; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the Texas Department of Health and the commissioner of health. The Texas Department of Health and the Texas Board of Health were abolished by Chapter 198, §1.18 and §1.26, 78th Legislature, Regular Session, 2003. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 sections implements Government Code, §2001.039.

§146.1. Definitions.

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

(1) Administrator--The department employee designated as the administrator of regulatory activities authorized by the Health and Safety Code, Chapter 48.

(2) Applicant--A promotor(a) or community health worker who applies to the Department of State Health Services for a certificate of competence; an instructor who applies to the department to train promotores or community health workers; or a sponsoring organization who applies to the department to offer training approved by the department to train promotores or community health workers.

(3) HHSC--The Texas Health and Human Services Commission.

(4) Certificate--Certificate issued to a promotor(a) or community health worker or instructor by the Department of State Health Services.

(5) Committee--The Promotor(a) or Community Health Worker Training and Certification Advisory Committee established by §146.2 of this title.

(6) Core Competencies--Key skills for promotores or community health workers required for certification by the department,

including communication skills, interpersonal skills, knowledge base on specific health issues, service coordination skills, capacity-building skills, advocacy skills, teaching skills, and organizational skills.

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

(8) Distance Learning--The acquisition of knowledge and skills through mediated information and instruction, encompassing all technologies and other forms of learning at a distance.

(9) Executive Commissioner--Executive Commissioner of the Health and Human Services Commission.

(10) Health--A state of complete physical, mental and social well-being where an individual or group is able to realize aspirations and satisfy needs, and to change or cope with the environment. Health is a resource for everyday life, not the objective of living; it is a positive concept emphasizing social and personal resources as well as physical capabilities. This definition is from the World Health Organization, "Ottawa Charter for Health Promotion, 1986."

(11) Certified Instructor--An individual approved by the department to provide instruction and training in one or more core competencies to promotores or community health workers.

(12) "Promotor(a)" or "Community Health Worker"--A person who, with or without compensation is a liaison and provides cultural mediation between health care and social services, and the community. A promotor(a) or community health worker: is a trusted member, and has a close understanding of, the ethnicity, language, socio-economic status, and life experiences of the community served. A promotor(a) or community health worker assists people to gain access to needed services and builds individual, community, and system capacity by increasing health knowledge and self-sufficiency through a range of activities such as outreach, patient navigation and follow-up, community health education and information, informal counseling, social support, advocacy, and participation in clinical research.

(13) Sponsoring organization--An organization approved by the department to deliver a certified training curriculum to promotores or community health workers or instructors.

(14) Certified Training Curriculum--An educational, community health training curriculum approved by the department for the purpose of training promotores or community health workers or instructors.

§146.2. Promotor(a) or Community Health Worker Training and Certification Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Promotor(a) or Community Health Worker Training and Certification Advisory Committee.

(2) The committee is established under the Health and Safety Code, §11.016, which allows the Executive Commissioner of HHSC to establish advisory committees.

(b) Applicable law. The committee is subject to Texas Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose and tasks.

(1) The committee shall advise the Executive Commissioner concerning rules to implement standards adopted under the Health and Safety Code, Chapter 48, relating to the training and

regulation of persons working as promotores or community health workers.

(2) The committee shall advise the department concerning guidelines and requirements relating to training and certification of promotores or community health workers, instructors, and sponsoring organizations.

(3) The committee shall review applications from sponsoring organizations, and recommend certification to the department if program requirements are met.

(4) The committee shall carry out any other tasks given to the committee by the Executive Commissioner.

(d) Review and duration. By November 1, 2013, the Executive Commissioner will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(e) Composition. The committee shall be composed of nine members appointed by the Executive Commissioner. The composition of the committee shall include:

(1) four promotores or community health workers currently certified by the department;

(2) two public members which may include consumers of community health work services or individuals with paid or volunteer experience in community health care or social services;

(3) one member from the Texas Higher Education Coordinating Board, or a higher education faculty member who has teaching experience in community health, public health or adult education and has trained promotores or community health workers; and

(4) two professionals who work with promotores or community health workers in a community setting, including employers and representatives of non-profit community-based organizations or faith-based organizations.

(f) Terms of office. The term of office of each member shall be three years, and the member may be reappointed once.

(1) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(2) Members shall be appointed for staggered terms so that the terms of three members will expire on January 1 of each year.

(g) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(h) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551. The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(i) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the Executive Commissioner. The report shall include attendance at committee and subcommittee meetings.

(j) Staff. Staff support for the committee shall be provided by the department.

(k) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff and approved by the committee at the next scheduled meeting.

(l) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(m) Statement by members.

(1) The Executive Commissioner, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the Executive Commissioner, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the Executive Commissioner, the department, or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(n) Reports to the Executive Commissioner. The committee shall file an annual written report with the Executive Commissioner.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the Executive Commissioner, the status of any rules which were recommended by the committee to the Executive Commissioner, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the Executive Commissioner each January.

(o) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms not later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state vouchers prepared by department staff.

§146.4. Application Requirements and Procedures for Promotores or Community Health Workers and Instructors.

(a) Purpose. The purpose of this section is to set out the application procedures for certification of promotores or community health workers and instructors.

(b) Application Requirements.

(1) Unless otherwise indicated, an applicant must complete all required information and documentation on current official department forms and submit the required information and documentation electronically or in hard copy as specified by the department.

(2) The department shall send a notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

(c) Application approval. The department shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (d) of this section.

(d) Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter;

(B) has failed or refused to properly complete or submit any application form(s) or has knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant's qualifications for certification;

(C) has engaged in unethical conduct as defined in §146.11 of this title (relating to Professional and Ethical Standards);

(D) has been convicted of a felony or misdemeanor directly related to the duties and responsibilities of a promotor(a) or community health worker or instructor as set out in §146.12 of this title (relating to Violations, Complaints and Subsequent Actions); or

(E) has developed an incapacity, which in accordance with the Americans with Disabilities Act, prevents the individual from practicing with reasonable skill, competence, and safety to the public as the result of:

(i) an illness;

(ii) drug or alcohol dependency; or

(iii) another physical or mental condition or illness;

(2) If the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the disapproval and of the opportunity for re-application or appeal;

(3) The applicant whose application has been disapproved under paragraph (1) of this subsection shall be permitted to reapply and shall submit a current application satisfactory to the department, in compliance with the then current requirements of this chapter and the provisions of the Health and Safety Code, Chapter 48.

(4) An applicant whose application has been disapproved may appeal the disapproval under the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(e) Application processing. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and has been approved or that the application is deficient and additional specific information is required.

(1) Letter of approval for certification - no more than 90 days.

(2) Letter of application deficiency - no more than 90 days.

§146.6. Application Requirements and Procedures for Sponsoring Organizations.

(a) Purpose. The purpose of this section is to set out the application procedures for certification of curricula from sponsoring organizations.

(b) Sponsoring organization certificate.

(1) Unless otherwise indicated, an applicant must complete all required information and documentation of credentials on current official department forms and submit the required information and documentation electronically or in hard copy as specified by the department.

(2) A sponsoring organization may submit an application to request approval to use a certified curriculum from another sponsor-

ing organization who has agreed to share the certified curriculum. In this situation, the application must include a description of changes, if any, to the certified curriculum.

(3) The department shall send a notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

(c) Application approval.

(1) The committee shall review applications from sponsoring organizations and recommend to the department certification for curricula that meets program requirements.

(2) The department shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (d) of this section.

(d) Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter; or

(B) has failed or refused to properly complete or submit any application form(s) or has knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant's qualifications for certification.

(2) If the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the disapproval and of the opportunity for re-application or appeal.

(3) The applicant whose application has been disapproved under paragraph (1) of this subsection shall be permitted to reapply and shall submit a current application satisfactory to the department, in compliance with the then current requirements of this chapter and the provisions of the Health and Safety Code, Chapter 48.

(4) An applicant whose application has been disapproved may appeal the disapproval under the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(e) Application processing. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required.

(1) Letter of acceptance of application for certification - no more than 90 days.

(2) Letter of application deficiency - no more than 90 days.

§146.7. Types of Certificates and Applicant Eligibility.

(a) Purpose. The purpose of this section is to set out the types of certificates issued and the qualifications of applicants.

(1) Upon approval of the application, the department shall issue the promotor(a) or community health worker, instructor or sponsoring organization a certificate with an expiration date and a certificate

number. An identification card shall be included for a promotor(a) or community health worker or instructor.

(2) Certificates shall be signed by the commissioner of the department and presiding officer of the advisory committee. The identification card issued to a promotor(a) or community health worker and instructor shall bear the signature of the commissioner and contain a photo of the promotor(a) or community health worker and instructor.

(3) Any certificate or identification card(s) issued by the department remains the property of the department and shall be surrendered to the department on demand.

(4) A promotor(a) or community health worker and instructor shall carry the original identification card. A sponsoring organization shall display the original certificate at the training or educational site. Photocopies shall not be carried or displayed.

(5) A person certified as a promotor(a) or community health worker shall only allow his or her certificate to be copied for the purpose of verification by employers, professional organizations, and third party payors for credentialing and reimbursement purposes. Other persons and/or agencies may contact the administrator in writing or by phone to verify certification.

(6) No one shall display, present, or carry a certificate or an identification card which has been altered, photocopied, or otherwise reproduced.

(7) No one shall make any alteration on any certificate or identification card issued by the department.

(8) The department shall replace a lost, damaged, or destroyed certificate or identification card upon written request.

(b) Special provisions for persons who have performed promotor(a) or community health worker services in the previous six years starting from the date the application is signed. Upon submission of the application forms by the practicing promotor(a) or community health worker and upon approval by the department, the department shall issue a certificate of competence to a person who has performed promotor(a) or community health worker services for not less than 1000 cumulative hours in the previous six years starting from the date the application is signed, as documented on form(s) specified by the department.

(c) Special provisions for persons with experience in instructing or training individuals providing promotor(a) or community health work services, including promotores or community health workers and other health care paraprofessionals and professionals. Upon submission of the application forms by the instructor and upon approval by the department, the department shall issue a certificate of competence to a person who has provided instruction or training to individuals providing community health work services for not less than 1000 cumulative hours in the previous six years starting from the date the application is signed.

(d) Minimum eligibility requirements for promotor(a) or community health worker certification. The following requirements apply to all individuals applying for certification:

(1) attainment of 18 years of age or an eligible and informed minor as determined by the department;

(2) freedom from physical or mental impairment, which in accordance with the Americans with Disabilities Act, interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of the persons being served; and

(3) submission of a satisfactory completed application on a form supplied by the department.

(e) Individuals applying for certification who do not meet the requirements of subsection (b) of this section shall complete a certified competency-based training program by an approved sponsoring organization.

(f) Minimum eligibility requirements for instructor certification. The following requirements apply to all individuals applying for certification:

(1) attainment of 18 years of age as determined by the department;

(2) freedom from physical or mental impairment, which in accordance with the Americans with Disabilities Act, interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of participants; and

(3) submission of a satisfactory completed application on a form supplied by the department.

(g) Individuals applying for certification who do not meet the requirements of subsection (c) of this section shall complete a certified instructor trainer program by an approved sponsoring organization. An individual applying for certification as an instructor may seek certification in one or more of the eight core competencies.

(h) Minimum eligibility requirements for certification of a curriculum from a sponsoring organization. The following requirements apply to all organizations applying for certification of a curriculum:

(1) approval and certification of a curriculum for promotor(a) or community health worker training, instructor certification or for continuing education of promotores or community health workers and instructors that meets the standards and guidelines established by the department and as set forth in §146.8 of this title (relating to Standards for the Approval of Curricula); and

(2) submission of a satisfactory completed application on a form supplied by the department.

§146.8. Standards for the Approval of Curricula.

(a) Purpose. The purpose of this section is to establish the minimum standards for approval of curricula and programs to train persons to perform promotor(a) or community health worker services or to act as an instructor.

(b) All 160-hour curricula to be used to train individuals to perform promotor(a) or community health worker services or to act as instructors must:

(1) assure that the eight core skill and knowledge competencies, identified in the National Community Health Advisor Study, June 1998 for promotores or community health workers, including communication, interpersonal, service coordination, capacity-building, advocacy, teaching and organizational skills and knowledge base on specific health issues are addressed;

(2) include at a minimum 20 clock hours of knowledge and skill-building per core competency for promotores or community health workers and include at a minimum 20 clock hours for instructor training in each of the core competencies that affect promotores or community health workers;

(3) include a method or process to evaluate and document the acquisition of knowledge and mastery of skills by the individual trained;

(4) include a method or process for the individual trained to evaluate the training experience;

(5) be certified by the department and offered within the geographic limits of the State of Texas;

(6) be submitted to the department along with supporting materials in hard copy and electronic format as specified by the department;

(7) be organized with all pages clearly legible and consecutively numbered with a table of contents and divided with tabs identified to correspond to the core competencies, including evaluation materials and other programmatic information and assurances required within this section;

(8) provide a list of certified instructors, facilities and locations for the training program;

(9) provide a calendar of scheduled training events by dates, times and locations;

(10) identify the method for recruiting persons to the program;

(11) report the names of individuals to the department who have successfully completed the training program within 30 days of program completion on a form supplied by the department;

(12) maintain an accurate record of each person's attendance and participation for not less than five years;

(13) include the participation in the curriculum development of an instructor certified by the department; and

(14) specify the method or methods by which training will be delivered, including classroom instruction and use of distance learning.

(c) All continuing education curricula to be used to provide continuing education to certified promotores or community health workers or instructors must:

(1) assure that one or more of the eight core skill and knowledge competencies, identified in the National Community Health Advisor Study, June 1998 for promotores or community health workers, including communication, interpersonal, service coordination, capacity-building, advocacy, teaching and organizational skills and knowledge base are addressed;

(2) include a method or process to evaluate and document the acquisition of knowledge and mastery of skills by the individual trained;

(3) include an evaluation by the individual trained of the training experience;

(4) be certified by the department and offered within the geographic limits of the State of Texas;

(5) be submitted to the department along with supporting materials in hard copy and electronic format as specified by the department;

(6) identify the title of the proposed continuing education curriculum, total contact hours, and hours per core competency;

(7) provide a list of certified instructors, facilities and locations for the training program;

(8) provide a calendar of scheduled training events by dates, times and locations;

(9) identify the method for recruiting persons to the program;

(10) report the names of individuals to the department who have successfully completed the training program within 30 days of program completion;

(11) maintain an accurate record of each person's attendance and participation for not less than five years;

(12) include the participation in the curriculum development of an instructor certified by the department; and

(13) specify the method or methods by which training will be delivered, including classroom instruction and use of distance learning.

(d) Addenda to existing certified curriculum. A sponsoring organization may submit an addendum when making revisions to a current, certified curriculum. An addendum may be submitted to the department via mail or email and must be in compliance with standards listed in this section.

§146.12. Violations, Complaints and Subsequent Actions.

(a) General. This section establishes standards relating to:

(1) offenses or criminal convictions;

(2) violations which result in disciplinary actions;

(3) procedures for filing complaints alleging violations and prohibited actions under the Health and Safety Code, Chapter 48, or this chapter; and

(4) the department's investigation of complaints.

(b) Criminal convictions which directly relate to the profession as an instructor, promotor(a) or community health worker.

(1) The department may suspend or revoke any existing certificate, or disqualify a person from receiving any certificate because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of an instructor, promotor(a) or community health worker.

(2) In considering whether a criminal conviction directly relates to the occupation of an instructor, promotor(a) or community health worker, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for certification as an instructor, promotor(a) or community health worker. The following felonies and misdemeanors relate to any certificate of an instructor, promotor(a) or community health worker because these criminal offenses indicate an inability or a tendency to be unable to perform as an instructor, promotor(a) or community health worker:

(i) any misdemeanor and/or felony offense involving moral turpitude by statute or common law; and

(ii) a misdemeanor or felony offense under various titles of the Texas Penal Code:

(I) offenses against the person (Title 5);

(II) offenses against property (Title 7);

(III) offenses against public order and decency (Title 9);

(IV) offenses against public health, safety, and morals (Title 10); and

(V) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4);

(C) the extent to which any certificate might offer an opportunity to engage in further criminal history activity of the same type as that in which the person previously has been involved;

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of an instructor, promotor(a) or community health worker. In making this determination, the department will apply the criteria outlined in Texas Occupations Code, Chapter 53, the legal authority for the provisions of this section; and

(E) the length of time since the date of the crime.

(3) The misdemeanors and felonies listed in paragraph (2)(B)(i) - (ii) of this subsection are not inclusive in that the department may consider other particular crimes in special cases in order to promote the intent of the Health and Safety Code, Chapter 48, and this chapter.

(c) Types of violations:

(1) a person intentionally or knowingly represents oneself as an instructor, promotor(a) or community health worker without a certificate issued under the Health and Safety Code, Chapter 48;

(2) a person obtains or attempts to obtain a certificate issued under the Health and Safety Code, Chapter 48, by bribery or fraud;

(3) a person engages in unprofessional conduct, including the violation of the standards of practice for instructors, promotores or community health workers as established by the department;

(4) a person fails to report to the department the violation of the Health and Safety Code, Chapter 48, or any allegations of sexual misconduct by another person;

(5) a person violates a provision of the Health and Safety Code, Chapter 48, or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department; or

(6) a person has a certificate revoked, suspended or otherwise subjected to adverse action or being denied a certificate by another certification authority in another state, territory or country.

(d) Procedures for revoking, suspending, or denying a certificate to persons with criminal backgrounds.

(1) The department shall give written notice to the person that the department intends to deny, suspend, or revoke the certificate after hearing in accordance with the provisions of Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(2) If the department denies, suspends, or revokes a certificate under these sections after hearing, the department shall give the person written notice of the reasons for the decision.

(e) Filing of complaints.

(1) Anyone may complain to the department alleging that a person has committed an offense or action prohibited under the Health and Safety Code, Chapter 48, or that a certificate holder has violated the Health and Safety Code, Chapter 48, or this chapter.

(2) A person wishing to complain about an offense, prohibited action, or alleged violation against an instructor, promotor(a) or community health worker or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the department. The department's mailing address is Office of Title V and Family Health, Promotor(a)/Community Health Worker Training and Certification Program, Mail Code 1922, P.O. Box 149347, Austin, Texas 78714-9347, physical address is 1100 West 49th Street, Austin, Texas 78756-3183, and telephone (512) 458-7111, extension 3500.

(3) Upon receipt of a complaint the department or the department's designee shall send an acknowledgment letter to the complainant and the department's complaint form which the complainant must complete and return to the department or the department's designee before action can be taken. If the complaint is made by a visit to the department, the form may be given to the complainant at that time; however, it must be completed and returned to the department or the department's designee before further action may be taken. Copies of the complaint form may be obtained from the department.

(4) Anonymous complaints shall be investigated by the department, provided sufficient information is submitted.

(f) Investigation of complaints. The department is responsible for investigating complaints.

(g) The department's action.

(1) The department shall take one or more actions described in this section.

(2) The department may determine that an allegation is groundless and dismiss the complaint.

(3) The department may determine that an instructor, promotor(a) or community health worker has violated the Health and Safety Code, Chapter 48, or this chapter and may institute disciplinary action in accordance with subsection (h) of this section.

(4) Whenever the department dismisses a complaint or closes a complaint file, the department shall give a summary report of the final action to the advisory committee, the complainant, and the accused party.

(h) Disciplinary actions. The department may take action under this section as follows.

(1) The department may reprimand an instructor, promotor(a) or community health worker or initiate action to deny, suspend, not renew, or revoke a certificate.

(2) The department may take disciplinary action if it determines that a person who holds a certificate is in violation of §146.11 of this title (relating to Professional and Ethical Standards).

(3) The department shall take into consideration the following factors in determining the appropriate action to be imposed in each case:

(A) the severity of the offense;

(B) the danger to the public;

(C) the number of repetitions of offenses;

(D) the length of time since the date of the violation;

(E) the number and type of previous disciplinary cases filed against the instructor, promotor(a) or community health worker;

(F) the length of time the instructor, promotor(a) or community health worker has performed community health work services or training;

(G) the actual damage, physical or otherwise, to the patient, if applicable;

(H) the deterrent effect of the penalty imposed;

(I) the effect of the penalty upon the livelihood of the instructor, promotor(a) or community health worker;

(J) any efforts for rehabilitation; and

(K) any other mitigating or aggravating circumstances.

(4) The department may take action for violation of the Health and Safety Code, Chapter 48, or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department.

(i) Fair hearing.

(1) The fair hearing shall be conducted according to the Chapter 1, Subchapter C of this title.

(2) Prior to making a final decision adverse to a certificate holder, the department shall give the certificate holder written notice of an opportunity for a hearing on the proposed action.

(3) The certificate holder has 20 days after receiving the notice to request a hearing on the proposed action. A request for a hearing shall be made in writing and mailed or hand-delivered to the department, unless the notice letter specifies an alternative method. If a person who is offered the opportunity for a hearing does not request a hearing within the prescribed time for making such a request, the person is deemed to have waived the hearing and the action may be taken.

(j) Final action.

(1) If the department suspends a certificate, the suspension remains in effect until the department determines that the reasons for suspension no longer exist. The instructor, promotor(a) or community health worker whose certificate has been suspended is responsible for securing and providing to the department such evidence, as may be required by the department that the reasons for the suspension no longer exist. The department shall investigate prior to making a determination.

(2) During the time of suspension, the former certificate holder shall return the certificate and identification card(s) to the department.

(3) If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in these sections; however, the department may not renew the certificate until the department determines that the reasons for suspension have been removed.

(4) A person whose application is denied or certificate is revoked as a result of disciplinary action is ineligible for a certificate under Health and Safety Code, Chapter 48, for one year from the date of the denial or revocation or surrender.

(5) Upon revocation or nonrenewal, the former certificate holder shall return the certificate and any identification card(s) to the department.

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 October 4, 2010.

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Lisa Hernandez

General Counsel

Department of State Health Services

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Proposal publication date: April 23, 2010

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

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25 TAC §146.5

STATUTORY AUTHORITY

The repeal is authorized under Health and Safety Code, §48.003, which requires the Texas Board of Health (board) to adopt rules that provide minimum standards and guidelines on training; §48.002, which allows the board to provide for exemption from certification by rule; §11.016, which allows the board to appoint advisory committees to assist the board in performing its duties; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the Texas Department of Health and the commissioner of health. The Texas Department of Health and the Texas Board of Health were abolished by Chapter 198, §1.18 and §1.26, 78th Legislature, Regular Session, 2003. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 sections implements Government Code, §2001.039.

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.

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CHAPTER 169. ZOONOSIS CONTROL SUBCHAPTER E. DOG AND CAT STERILIZATION

25 TAC §169.102

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §169.102, concerning the Department of State Health Services Animal Friendly Account, with changes to the proposed text as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5716).

BACKGROUND AND PURPOSE

The amendment is necessary to comply with Health and Safety Code, Chapter 828, "Dog and Cat Sterilization," which requires the department to make grants to eligible organizations for the purpose of providing low-cost dog and cat sterilization to the general public.

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 169.102 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 §169.102 replaces the definition of "owner" with "custodian;" deletes the definition of "department" because it is defined in Subchapter A which refers to definitions in the chapter; replaces the word "grants" to "account" in the section title, and in subsections (a), (d), and (g) to align more closely with current state law; replaces "non-profit" with "nonprofit" to align more closely with current state law and for rule consistency; changes "animal friendly account" throughout the rule to lower case lettering to align more closely with current state law; adds a definition of "sterilization" to make the rule consistent with the statute in subsection (b); adds language in subsection (f) to assure that sterilizations are performed in a manner consistent with the statute; updates the department's mailing address in subsection (g); and clarifies the requirements for animal friendly grants to align more closely with current state law and revises terminology throughout the rule for consistency.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: Texas Federation of Animal Care Societies, Texas Humane Legislation Network, and the Texas Veterinary Medical Association. Two commenters were not against the rule in its entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. One commenter was in favor of the rule in its entirety.

Comment: Concerning the elimination of giving funding preference to "a new, qualified program that does not duplicate existing low-cost sterilization efforts in a given community" in §169.102(j)(2)(D), one commenter stated that it is important to assist groups that are starting, or are in their first two years of doing low-cost spay/neuter. The commenter stated that it is hardly fair, nor does it achieve the intended goal, to just keep giving the money to the same groups. The commenter stated there should be a cap on the number of years one agency can receive the monies.

Response: The commission disagrees because giving funding preference to organizations in §169.102(j)(2)(D) is not mandated by statute and can eliminate organizations that have the most positive effect in curbing the pet overpopulation problem in Texas. All eligible organizations in Texas may apply for animal friendly grant money when requests for proposals are announced. Contracts last for one year and may be renewed for an additional year. Following the two-year project period, a new application process is offered statewide, if additional funds are available. Applications are screened and awards are made based on the highest scores and the availability of funds. Every attempt is made to distribute funds across the state to the degree made possible by the applications received. No change was made to the rule as a result of this comment.

Comment: Concerning the elimination of giving funding preference to organizations that "targets low-income pet owners, describing how the applicant defines, ascertains, and verifies that the person is financially challenged" in subsection (j)(2)(A), one commenter asked that the department not make changes to this subsection and continue to target grant funds where they will do the most good to those in the most need of low cost spays and neuters: low income pet owners.