

Department of State Health Services
Agenda Item for State Health Services Council
August 6, 2007

Agenda Item Title: Amend §§13.11, 13.13-13.19, 13.31-13.34 and 13.61; repeal §§ 13.12, 13.20, and 13.41-13.48; and propose new §13.41, concerning data collection, designation of sites serving medically underserved populations, limited liability certification, and medically underserved areas and resident pharmacists.

Agenda Number: **3-k**

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: In accordance with Government Code, §2001.039, sections have been reviewed under the four-year rule review. The Department of State Health Services has determined that reasons for adopting the sections continue to exist and rules on these subjects are needed. Specific sections require hospitals to submit data online, amend minor language, and impose new hospital reporting deadlines.

Summary: Subchapter B, §13.11 and §§13.13-13.19, change the method of reporting by hospitals from "either a paper OR electronic survey form" to an online electronic method only. The online system includes two hospital surveys reported to the department under Health and Safety Code, §311.033 and §311.045(a). These actions will reduce the department's workload because it will no longer be necessary for department staff to enter survey data by hand into a database file. The proposed amendment also substitutes DSHS for Texas Department of Health.

Subchapter C (Designation of Sites Serving Medically Underserved Populations), §§13.31 - 13.34, is proposed for amendment in order to authorize the department to use "Site-MUP" as an abbreviation for "sites serving medically underserved populations," to reflect a name change from Texas Department of Health to DSHS; and to change the mailing address for applications since the Office of Policy and Planning has been renamed the Center for Health Statistics.

Subchapter D (Limited Liability Certification), §§13.41 - 13.48, concerns the certification of a nonprofit hospital or hospital system for limited liability of non-economic damage awards. New §13.41 incorporates the new certification and reporting deadlines required by Senate Bill (SB) 1378, 79th Legislative Session and proposes how the department will verify eligibility. It also changes the effective date of certification from April 30th to December 31st each year.

Subchapter F (Medically Underserved Areas and Resident Pharmacists), §13.61, is proposed for amendment to change the Texas Department of Health to the Department of State Health Services.

Summary of Stakeholder Input to Date (including advisory committees): Proposed amendments and repeal of rules were reviewed by the Texas Hospital Association (THA). THA does not oppose the proposed amendments, §§13.11 and 13.13 – 13.19, or proposed repeals, §§13.12 and 13.20. The other sections were either amended due to changes in law governing the rules, or were amended because of the need for making minor editorial changes in language since the sections were last approved.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item # **3-k**.

Agenda Item Approved by: _____

Bruce A. Gunn, Ph.D.

Presented by: Bruce A. Gunn, Ph.D. **Title:** Manager, Health Provider Resources

Program/Division: Center for Health Statistics **Contact Name/Phone:** Bruce A. Gunn,
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Date Submitted

5/7/2007

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT
Subchapter B (Data Collection)
Amendments §§13.11 and 13.13-13.19
Repeals §§13.12 and 13.20
Subchapter C (Designation of Sites Serving Medically Underserved Populations)
Amendments §§13.31 - 13.34
Subchapter D (Limited Liability Certification)
Repeals §§13.41 - 13.48
New §13.41
Subchapter F (Medically Underserved Areas and Resident Pharmacists)
Amendment §13.61.

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§13.11, 13.13-13.19, 13.31-13.34 and 13.61; repeals §§13.12, 13.20, 13.41-13.48; and new §13.41, concerning data collection, designation of sites serving medically underserved populations, limited liability certification, and medically underserved areas and resident pharmacists.

BACKGROUND AND PURPOSE

In accordance with the requirements of the Government Code, §2001.039, the following sections have been reviewed under the four-year rule review required by state law and the department has determined that reasons for adopting the sections continue to exist in that rules on this subject are needed; however the sections need amending or repeal as described in this preamble.

Sections 13.11 and 13.13–13.19 are proposed for amendment in order to require hospitals to submit data under Health and Safety Code, §311.033 and §311.045(a), by an online electronic system rather than by a paper survey form. Sections 13.12 and 13.20 are proposed for repeal.

Sections 13.31 – 13.34 are proposed for amendment because of minor changes in language since the sections were last approved.

Sections 13.41 – 13.48 are proposed for repeal and replaced by new §13.41 in order to reflect new hospital reporting deadlines as required by Senate Bill (SB) 1378, 79th Legislature.

Section 13.61 is proposed for amendment due to minor editorial changes in language since the sections were last approved.

SECTION-BY-SECTION SUMMARY

Subchapter B (Data Collection), §13.11 and §§13.13-13.19, are proposed for amendment to change the method of reporting by hospitals from "either a paper OR electronic survey form" to an online electronic method only and as selected by the department. The online system will

include two hospital surveys required by statute to be reported to the department by Health and Safety Code, §311.033 and §311.045(a): the Annual Survey of Hospitals (ASH, an online survey hosted by the American Hospital Association (AHA)) and the Annual Statement of Community Benefits Standard (ASCBS) paper survey. Combining these two surveys into one survey form will reduce the department's workload because it will no longer be necessary for department staff to enter ASCBS hospital charity care data by hand into a database file.

The proposed amended rules will also streamline how the data are edited and verified and will allow the department to more easily meet statutory reporting deadlines to the Offices of the Comptroller and Attorney General. These proposed amendments have been discussed with the Texas Hospital Association, AHA, and several hospital staff. The stakeholders believe the online system will help hospitals by requiring them to provide financial, utilization, and charity care data to the department through one survey form rather than two survey systems. The proposed amendment also substitutes Department of State Health Services for the older name of the agency, Texas Department of Health.

These rules are based on Health and Safety Code, §311.033 and §311.045(a). Since the enactment of these rules, the department has obtained the technology to collect and receive survey data from hospitals and systems through an electronic (online) system. Section 311.033 is the annual survey of hospitals that is already available online. These rules will no longer allow filing of a hard copy. Section 311.045(a) is the ASCBS. These rules will require online filing of the ASCBS. Section 311.046(a)(5) requires a nonprofit hospital and hospital system to prepare an annual report of the community benefits plan that shall include specific information along with completed Worksheet 1-A that computes the ratio of cost to charge for the fiscal year referred to in §311.046(a)(4). The worksheet was adopted by the department in August 1994 for use in the ASCBS survey. With the proposed change to electronic reporting in 2007, the department will continue to collect the salient information collected by Worksheet 1-A, but not in the same paper format. Section 311.046(b) requires nonprofit hospitals and hospital systems to prepare an annual report of their community benefits plan that contains specific hospital data and to report this information to the department. Filing the ASCBS online will satisfy part of the requirements of §311.046.

Subchapter C (Designation of Sites Serving Medically Underserved Populations), §§13.31 - 13.34, is proposed for amendment in order to authorize the department to use "Site-MUP" as an abbreviation for "sites serving medically underserved populations," to reflect a name change from Texas Department of Health to the Department of State Health Services, and to change who the applications should be mailed to in the Department of State Health Services, since the Office of Policy and Planning has been renamed the Center for Health Statistics.

Subchapter D (Limited Liability Certification), §§13.41 - 13.48, concerns the certification of a nonprofit hospital or hospital system as a legal entity for the purpose of limited liability of non-economic damage awards. It caps or limits the amount of money awarded to patients who sue hospitals for pain and suffering awards (non-economic damage awards). New §13.41 will incorporate the new statutory certification and reporting requirements and deadlines required by Senate Bill (SB) 1378, 79th Legislative Session. The proposed new rule covers definitions, eligibility rules for certification, mandatory deadline for hospitals to request certification, duties

of the department in certifying hospitals and systems, how the department will verify eligibility, and the effective date of certification. Health and Safety Code, §311.0456, requires the department to certify nonprofit hospitals and hospital systems for limited liability for non-economic damage awards if the hospitals or hospital systems meet certain charity care criteria stated in the law. The date for the department to certify hospitals and hospital systems was changed by SB 1378 from April 30th of each year to December 31st of each year.

Subchapter F (Medically Underserved Areas and Resident Pharmacists), §13.61, is proposed for amendment to change the Texas Department of Health to the Department of State Health Services.

FISCAL NOTE

Bruce Gunn, Ph.D., Manager, Health Provider Resources Branch, Center for Health Statistics, has determined that for each year the sections will be in effect, there will be no fiscal impact on state or local governments as a result of administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Bruce Gunn, Ph.D. has also determined there will be no effect on small businesses or micro-businesses as a result of the proposed sections. This was determined by interpretation of the rules that those entities will not be required to alter their business practices to comply with the sections as proposed. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There will be no effect on local employment.

PUBLIC BENEFIT

Bruce Gunn, Ph.D. has determined that for each of the first five years that these sections are in effect, the following public benefits are anticipated:

Subchapter B, §13.11 and §§13.13 - 13.19. As a result of amending this subchapter and repealing §§13.12 and 13.20, the department will collect more accurate and useful hospital financial, utilization, and charity care data and will improve the timeliness of submitting reports to the Texas State Comptroller's office and the Office of the Attorney General under the deadline required by §311.0455 related to nonprofit hospital data. The reason for this is that the data will be collected with an online survey rather than a paper survey.

Subchapter C, §§13.31 - 13.34. These amendments are editorial in nature and correct references to the department.

Subchapter D, §§13.41. The public benefit will be the improved and timely determination of a hospital's eligibility for limited liability certification. The change in certification deadline from May 31st to December 31st will allow the hospital team to use edited and verified hospital data to certify hospitals because hospital charity care data are not routinely verified until later in the year, November through December. Public and for-profit hospitals are not affected by these

sections and will not benefit from these amendments. New §13.41 will simplify the rules by incorporating the language in eight sections into one section.

Subchapter F, §13.61. These amendments are editorial in nature and correct references to the department.

REGULATORY ANALYSIS

The department has determined that these proposed amendments are not a “major environmental rule” as defined by Government Code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productively, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Bruce Gunn, Ph.D., Manager, Health Provider Resources Branch, Center for Health Statistics, Texas Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261 or by email to bruce.gunn@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services, Deputy General Counsel, Linda Wiegman, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies’ authority to adopt.

STATUTORY AUTHORITY

The proposed amendments, repeals and new rule are authorized by the Education Code, §61.924 which authorizes the department to define medically underserved areas for the resident pharmacy positions; Occupations Code, §157.052 which authorizes the department to define medically underserved areas for sites at which advanced practice nurse practitioners and physician assistants may carry out prescription drug orders; Health and Safety Code, §§311.031 – 311.048 which requires hospitals, including nonprofit hospitals, to provide financial, utilization, and charity care data to the department; §311.0456 which authorizes the department to issue limited

liability certification to nonprofit hospitals and hospital systems that meet stated criteria; §311.046 which describes the survey forms and methods of collection of data from nonprofit hospitals; 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 administration of Health and Safety Code, Chapter 1001.

The amendments, repeals and new rule affect Education Code, Chapter 61; Occupations Code, Chapter 157; Health and Safety Code, Chapters 311, 531 and 1001; and Government Code, Chapter 531. Review of the rules implements Government Code, §2001.039

Sections for repeal:

- §13.12. Scope.
- §13.20. Open Records Request Procedures.
- §13.41. Purpose and Authority.
- §13.42. Definitions.
- §13.43. Eligible Entities.
- §13.44. Certification Criteria.
- §13.45. Mandatory Submission Deadline.
- §13.46. Duties of the Department.
- §13.47. Effective Date of Certification.
- §13.48. Effect of Certification.

Legend: (Proposed Amendments)
Single Underline = New Language
[Bold Print and Brackets] = Deleted Language
Regular Print = Existing Language

SUBCHAPTER B. DATA COLLECTION.

§13.11. Purpose and Scope.

The purpose of the sections in this subchapter **[chapter]** is to implement Health and Safety Code, Chapter 104, Subchapter D, which requires the department to adopt rules covering the collection of data from health care facilities, such as hospitals, and the dissemination of data to facilitate health planning and resource development; Health and Safety Code, Chapter 311, Subchapters C and D concerning the collection and reporting of hospital financial and utilization data including data regarding the provision of levels of charity care by certain nonprofit hospitals, and the submission of an annual report of a community benefits plan by certain nonprofit hospitals.

The scope of this subchapter is to describe the criteria and procedures which the department will use in implementing data collection, dissemination, and reporting requirements. This subchapter will cover the collection and dissemination of data from the public or private hospitals that are included in the definition of the term "health care facilities" in the Health and Safety Code, Chapter 104, Subchapter A. The remaining entities included in the definition of the term "health care facilities" are not covered by this subchapter. If data covered by this subchapter will be collected from a public or private hospital that is a general or special hospital licensed under the Health and Safety Code, Chapter 241; a private mental hospital licensed under the Health and Safety Code, Chapter 577; or a treatment facility licensed under the Health and Safety Code, Chapter 464, the data will be collected under authority of and in compliance with the requirements of the Health and Safety Code, Chapters 104 and 311.

§13.13. Definitions.

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

[(1) Board – The Texas Board of Health.]

(1) **[(2)]** Chapter 104 - Provisions relating to the data collection responsibilities of the Department of State Health Services **[Texas Department of Health]** as the state health planning and development agency found within the Health and Safety Code, Title 2.

(2) **[(3)]** Chapter 311 - Provisions relating to the powers and duties of hospitals found within the Health and Safety Code, Title 4.

(3) **[(4)]** Charity care--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to a person classified by the hospital as financially or medically indigent and/or providing, funding or

otherwise financially supporting health care services provided to financially indigent persons through other nonprofit or public outpatient clinics, hospitals or health care organizations.

(4) [(5)] Community benefits--The unreimbursed cost to a hospital of providing charity care, government-sponsored indigent health care, donations, education, government-sponsored program services, research, and subsidized health services. Community benefits do not include the cost to the hospital of paying any taxes or other governmental assessments.

(5) [(6)] Department--The Department of State Health Services [**Texas Department of Health**].

(6) [(7)] Donations--The unreimbursed costs of providing cash and in-kind services and gifts, including facilities, equipment, personnel, and programs, to other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(7) [(8)] Education-related cost--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting educational benefits, services, and programs including education of medical professionals and health care providers; scholarships and funding to medical schools, colleges, and universities for health professions education; education of patients concerning diseases and home care in response to community needs; and community health education through informational programs, publications, and outreach activities in response to community needs.

(8) [(9)] Financially indigent--An uninsured or underinsured person who is accepted for care with no obligation or a discounted obligation to pay for the services rendered based on the hospital's eligibility system.

(9) [(10)] Government sponsored indigent health care--The unreimbursed cost to a hospital of providing health care services to recipients of Medicaid and other federal, state, or local indigent health care programs, eligibility for which is based on financial need.

(10) [(11)] Government-sponsored program unreimbursed costs--The unreimbursed cost to the hospital of providing health care services to the beneficiaries of Medicare, the Civilian Health and Medical Program of the Uniformed Services, and other federal, state, or local government health care programs.

(11) [(12)] Health care facility--Regardless of ownership, a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic which performs ambulatory surgical procedures, rural health initiative clinic, urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, and other facilities as defined by federal law, but does not include the office of physicians or practitioners of the healing arts singly or in groups in the conduct of their profession.

(12) [(13)] Health care organization--A nonprofit or public organization that provides, funds, or otherwise financially supports health care services provided to financially indigent persons.

(13) [(14)] Hospital--A general or special hospital licensed under the Health and Safety Code, Chapter 241; a private mental hospital licensed under the Health and Safety Code, Chapter 577; and a treatment facility licensed under the Health and Safety Code, Chapter 464.

[(15) Hospital Data Advisory Committee – An advisory group, appointed by the board, which assists the department in carrying out its responsibilities under Health and Safety Code, Chapter 311.]

(14) [(16)] Hospital eligibility system--The financial criteria and procedure used by a hospital to determine if a patient is eligible for charity care. The system shall include income levels and means testing indexed to the federal poverty guidelines; provided, however, that a hospital may not establish an eligibility system which sets the income level eligible for charity care lower than that required by counties under § 61.023 or higher, in the case of the financially indigent, than 200% of the federal poverty guidelines. A hospital may determine that a person is financially or medically indigent pursuant to the hospital's eligibility system after health care services are provided.

(15) [(17)] Hospital system--A system of local nonprofit hospitals under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles of the corporate parent.

(16) [(18)] Medically indigent--A person whose medical or hospital bills after payment by third-party payors exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(17) [(19)] Net patient revenue--An accounting term that shall be calculated in accordance with generally accepted accounting principles for hospitals.

(18) [(20)] Nonprofit hospital--

(A) A hospital that is organized as a nonprofit corporation or a charitable trust under the laws of this state or any other state or country and is:

(i) eligible for tax-exempt bond financing; or

(ii) exempt from state franchise, sales, ad valorem, or other state or local taxes. For purposes of determining whether a hospital is "organized" as a nonprofit corporation or charitable trust, the department will look at the entity which holds the hospital license issued by the department; that is the entity which must be organized as a nonprofit corporation or charitable trust.

(B) A "nonprofit hospital" shall not include a hospital that:

(i) is exempt from state franchise, sales, ad valorem, or other state or local taxes;

(ii) does not receive payment for providing health care services to any inpatients or outpatients from any source including, but not limited to, the patient or any person legally obligated to support the patient, third-party payers, Medicare, Medicaid, or any other federal, state, or local indigent care program; payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research; and

(iii) does not discriminate on the basis of inability to pay, race, color, creed, religion, or gender in its provision of services.

(C) A "nonprofit hospital" does not include a hospital that is located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a health professional shortage area. A "nonprofit hospital" includes a hospital that is located in a county with a population under 50,000 population where only a subpopulation, partial geographic area or a facility is designated as a health professional shortage area.

(19) [(21)] Patient data--Information derived from individual, acute care, inpatient, and outpatient discharge abstract records.

(20) [(22)] Subsidized health services--Services provided by a hospital in response to community needs for which the reimbursement is less than the hospital's cost for providing the services and which must be subsidized by other hospital or nonprofit supporting entity revenue sources. Subsidized health services include, but are not limited to, emergency and trauma care, neonatal intensive care, freestanding community clinics, and collaborative efforts with local government or private agencies in preventive medicine.

(21) [(23)] Survey--The annual data collection effort conducted by the department to implement the provisions of Health and Safety Code, Chapters 104 and 311.

(22) [(24)] Tax exempt benefits--All of the following, calculated in accordance with standard accounting principles for hospitals for tax purposes using the applicable statutes, rules and regulations regarding the calculation of these taxes:

(A) the dollar amount of federal, state, and local taxes foregone by a nonprofit hospital and its nonprofit supporting entities. For purposes of this definition federal, state, and local taxes include income, franchise, ad valorem, and sales taxes;

(B) the dollar amount of contributions received by a nonprofit hospital and its nonprofit supporting entities; and

(C) the value of tax-exempt bond financing received by a nonprofit hospital and its nonprofit supporting entities.

(23) [(25)] Unreimbursed costs--The costs a hospital incurs for providing services after subtracting payments received from any source for such services including but not limited to the following: third-party insurance payments; Medicare payments; Medicaid payments; Medicare

education reimbursements; state reimbursements for education; payments from drug companies to pursue research; grant funds for research; and disproportionate share payments. For purposes of this definition, the term "costs" shall be calculated by applying the cost to charge ratios derived in accordance with generally accepted accounting principles for hospitals to billed charges. The calculation of the cost to charge ratios shall be based on the most recently completed and audited prior fiscal year of the hospital or hospital system. For purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining the unreimbursed costs of charity care and government-sponsored indigent health care.

§13.14. Annual Survey of Hospitals (ASH) - Types of Data To Be Reported.

The types of ASH data which hospitals must submit [report] to the Department of State Health Services [Texas Department of Health] (department) through the online survey form are as follows:

(1)-(5) (No change.)

§13.15. Survey Forms and Methods of Reporting Data.

(a) The hospital shall use the online survey form specified by the Department of State Health Services [Texas Department of Health] (department) for reporting purposes. The department shall provide access to an [a hard copy or] electronic survey form, including instructions to each hospital on how to submit hospital data [for reporting] electronically [and on paper, to each hospital] on an annual basis.

(b) The submitting of data for the Annual Survey of Hospitals (ASH) and the Annual Statement of Community Benefits Standard (ASCBS) will be collected by one online survey form; however, the ASCBS will be required only for nonprofit hospitals. In addition, nonprofit hospitals will be permitted to file the ASCBS at a separate date from filing of the ASH data since state law requires the ASCBS to be filed no later than 120 days after the hospital's fiscal year ends and that date may not coincide with the date for the ASH.

(c) [(b)] The hospitals shall complete all requested sections on the electronic survey form and submit [return] it electronically [or in paper form by regular mail] to the department within 60 days of receipt unless the nonprofit hospital chooses to submit the ASCBS at a different date as allowed by Chapter 311. The hospitals shall submit [report] data for the hospitals' most recently completed fiscal year. A copy of the hospital's eligibility system and any other information requested shall be sent [submitted] to the department by regular mail.

(d) [(c)] The department may request missing or incomplete data by written or telephone request. Hospitals shall complete all requested follow-up in the time frame specified by the department.

(e) [(d)] A hospital may, but is not required to, provide the data for the ASH **[required by subsection (b) of this section]** if the hospital:

(1) is exempt from state franchise, sales, ad valorem, or other state or local taxes; and

(2) does not seek or receive reimbursement for providing health care services to patients from any source, including:

(A) the patient or any person legally obligated to support the patient;

(B) a third party payor; or

(C) Medicaid, Medicare, or any other federal, state, or local program for indigent health care.

§13.16. Verification Report.

The department shall send each reporting hospital a copy of its data verification report prior to the publication of the results of the Annual Survey of Hospitals **[survey]**. The hospital shall review the contents of the verification report provided by the department **[computer generated report]**. If modifications to the report are necessary, the appropriate changes shall be made on the report, and the hospital administrator shall sign and return the report to the department within 31 days of receipt. If no changes are reported within 31 days, the department shall consider the hospital's report verified.

§13.17. Duties of Nonprofit Hospitals under Health and Safety Code, Chapter 311.

(a) Annual report of the Community Benefits Plan (CBP) **[community benefits plan]**.

(1) The annual CBP report **[of the community benefits plan]** may be filed with the department on a hospital or hospital system basis. A community benefits plan developed by a hospital serves as a hospital's operational plan for serving the community's health care needs and sets out goals and objectives for providing community benefits that include charity care and government-sponsored indigent health care.

(2) A nonprofit hospital or hospital system shall file an annual CBP report **[of the community benefits plan]** with the department no later than April 30 of the following year.

(3) The nonprofit hospital's or hospital system's annual CBP report **[of the community benefits plan]** must include, at a minimum:

(A) (No change.)

(B) a disclosure of the health care needs of the community that were considered in developing the CBP **[community benefits plan]**;

(C)-(E) (No change.)

(4) In addition to the annual CBP report [**of the community benefits plan**], a nonprofit hospital or hospital system shall file a completed worksheet as required by paragraph (3)(E) of this subsection no later than ten working days after the date the hospital or hospital system files its Medicare cost report.

(b) Annual statement of community benefits standard (ASCBS).

(1) Each nonprofit hospital or hospital system shall also report the following information to the department as [**part of**] the ASCBS [annual statement] part of the online survey form:

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

(2) The ASCBS [annual statement of community benefits standard] shall [**may**] be filed online with the department on a hospital or hospital system basis.

(3) A nonprofit hospital or hospital system is required to file an annual statement with the department no later than 120 days after the hospital's or hospital system's fiscal year ends; however, the department will accept the ASCBS [annual statement] as partially fulfilling the requirement to submit an [part of the acceptance of] annual report of the hospital or hospital system community benefits plan. The ASCBS [annual statement] filed under this subsection shall be based on the most recently completed and audited prior fiscal year of the hospital and shall state which of the standards for providing community benefits has been satisfied. A nonprofit hospital or hospital system may elect to provide community benefits according to any of the following standards:

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

(4) (No change.)

(5) A nonprofit hospital or hospital system shall use the ASCBS [annual statement of community benefits standard] part of the online survey [standard] form and accompanying worksheets developed by the department for reporting under this section. Hospitals electing to report on a system basis shall consolidate the individual hospital information into a single ASCBS [annual statement of community benefits standard] form for the online system. A separate set of worksheets shall be completed for each individual hospital included in the system.

(6) The department will accept written revisions of the ASCBS [annual statement of community benefits standard] for 30 days after the filing date.

(7) The department may request missing or incomplete data by written or telephone request. Nonprofit hospitals or hospital systems shall answer all requests received from the department [complete all requested follow up] in the time frame specified by the department.

(8)-(9) (No change.)

[(10) Under the Tax Code, §171.063(h), a requirement that a nonprofit hospital provide charity care and community benefits in order to be exempt from franchise tax may be satisfied by a donation of money to the Texas Healthy Kids Corporation established by the Health and Safety Code, Chapter 109, provided that:]

[(A) the money is donated to be used for a purpose described by the Health and Safety Code, §109.033(c); and]

[(B) not more than 10% of the charity care required under any provision of the Health and Safety Code, §311.045, may be satisfied by the donation.]

(11) (No change.)

(c) Reporting.

(1) The department shall notify nonprofit hospitals in writing that the annual report of the community benefits plan and the online ASCBS **[statement of community benefits standard which] form that** includes a brief summary of charity care policy and community benefits must be filed in accordance with these rules.

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

(4) All hospitals or hospital systems shall report any change of ownership which may affect the nonprofit status of the hospital or hospital system to the Center for Health Statistics, Hospital Survey Unit **[Office of Health Information and Analysis, formerly known as the Bureau of State Health Data and Policy Analysis]**, at the department within 60 days of the effective date of the change.

(d) Posting of sign. Nonprofit hospitals shall prepare a statement notifying the public that the annual report of the community benefits plan is public information, that it is filed with the department, and that it is available on request from the Center for Health Statistics, Hospital Survey Unit **[Office of Health Information and Analysis, formerly known as the Bureau of State Health Data and Policy Analysis]**, Department of State Health Services **[Texas Department of Health]**, 1100 West 49th Street, Austin, Texas 78756. The statement must indicate the report's availability date and be posted in prominent places throughout the hospital, including, but not limited to, the waiting areas of the emergency room and the admissions office. Nonprofit hospitals shall also print the statement in the patient guide or other materials that provide the patient with information about the hospital's admissions criteria.

(e) (No change.)

(f) Exemptions. A nonprofit hospital is exempt from the reporting requirement in subsection (c) of this section if the hospital is located in a county with a population under 50,000 and in which the entire county or the population of the entire county has been designated as a "Federally designated Health Professional Shortage Area (HPSA)" **["health professional**

shortage area''] during the current or any previous fiscal year and has continued to maintain that designation.

(g) (No change.)

§13.18. Noncompliance with Reporting Requirements.

(a) Reporting of data on the online survey form for the Annual Survey of Hospitals (ASH).
[Data reporting]

(1) If a hospital does not submit the [a] completed online survey form to the Department of State Health Services [Texas Department of Health] (department) within the 60-day reporting period and in accordance with [established in] §13.15 of this title (relating to Survey Forms and Methods of Reporting Data), the department may institute the following procedures

(A) The department will notify the entity in writing by certified mail, return receipt requested, that the entity is in noncompliance with department reporting requirements and may be in violation of the Health and Safety Code, Chapter 104. The written notification will also state that the commissioner **[of health]** may request that the attorney general institute and conduct a suit in the name of the state to recover civil penalties if the hospital fails to submit the requested data to the department within 30 days of the date the entity received the notification letter.

(B) If the department does not receive the requested data from the non-responding hospital within the specified time frame, the commissioner **[of health]** may notify the attorney general in writing of the entity's noncompliance. The department will send a copy of the written notification to the hospital.

(2) (No change.)

(b) Report of the Community Benefit Plan (CBP) and the online Annual Statement of Community Benefits Standard (ASCBS). **[Community benefit plans.]**

(1) A nonprofit hospital or hospital system that does not timely submit a CBP report [of the community benefits plan] to the Department of State Health Services [Texas Department of Health] (department) according to the requirements and procedures established in these sections is subject to a civil penalty of not more than \$1,000 for each day of noncompliance, under the provisions of Health and Safety Code, Chapter 311.

(2) If a nonprofit hospital or hospital system does not submit a CBP report [of the community benefits plan] to the department within the reporting period established in §13.17 of this title (relating to Duties of Nonprofit Hospitals under Health and Safety Code, Chapter 311), the department may institute the following procedures.

(A) The department will notify the entity in writing by certified mail, return receipt requested, that the entity is in noncompliance with department reporting requirements and

may be in violation of the Health and Safety Code, Chapter 311. The written notification will also state that the commissioner **[of health]** may request that the attorney general institute and conduct a suit in the name of the state to recover civil penalties if the hospital or hospital system fails to submit the report to the department within ten days after receipt of the written notification letter.

(B) If the department does not receive the CBP report **[of the community benefits plan]** from the non-responding hospital or hospital system within the specified time frame, the commissioner **[of health]** may notify the attorney general in writing of the entity's noncompliance. The department will send a copy of the written notification to the hospital or hospital system.

§13.19. Confidential Data

(a) The following data received by the Department of State Health Services **[Texas Department of Health]** (department) from a hospital is confidential under authority of the Health and Safety Code, Chapters 104 and 311:

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

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

SUBCHAPTER C. DESIGNATION OF SITES SERVING MEDICALLY UNDERSERVED POPULATIONS.

§13.31. Purpose and Scope.

(a) Purpose. The purpose of these sections is to implement the provisions in the Texas Occupations Code, §157.052, by the establishment of program rules for the determination of sites serving medically underserved populations (Site-MUPs). Designated sites will be eligible for qualified advanced nurse practitioners and physician assistants to carry out prescription drug orders in accordance with rules developed by the Texas Board of Nurse Examiners and Texas Medical Board **[Texas Board of Medical Examiners]**.

(b) Scope. The scope of these sections is to describe the criteria and procedures that the Department of State Health Services **[Texas Department of Health]** (department) will use in determining Site-MUPs **[sites serving medically underserved populations]**. The criteria will apply to sites not already qualified under the other definitions of eligible sites identified in the Texas Occupations Code, §157.052.

(c) Administration. The department shall designate Site-MUPs **[sites serving medically underserved populations]**.

§13.32. Definitions.

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

(1) (No change.)

[(2) Board – The Texas Board of Health.]

(2) [(3)] Department -The Department of State Health Services [Texas Department of Health].

(3) [(4)] Eligible client populations - Residents meeting the eligibility criteria for participation in any of the following programs:

(A) federally funded health care programs, including, but not limited to: AIDS (health care delivery programs); community and migrant health centers (Public Health Service Act, §§329 and 330 grantees); family planning; homeless (including Public Health Service Act, §340 grantees); Medicaid; or Medicare;

(B) state funded health care programs, including, but not limited to: AIDS (health care delivery programs); children with special health care needs (CSHCN); Medicaid; state primary health care; or student health centers (state funded colleges and universities); or

(C) locally funded health care programs, including, but not limited to: locally supported nonprofit health care programs; programs funded by city or county governmental entities; or programs funded by hospital districts.

(4) [(5)] Primary care physicians--Physicians practicing in family/general practice, obstetrics/gynecology, internal medicine or pediatrics.

§13.33. Criteria for Designating Site-MUPs [Sites Serving Medically Underserved Populations].

(a) The department [Texas Department of Health (department)] will designate a site located in an area that has an insufficient number of physicians providing services to eligible client populations if it is determined that:

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

(b) (No change.)

§13.34. Application Process.

(a) Applicants must submit an application form, provided by the [Texas Department of Health] department, which includes the following information:

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

(3) adequate demonstration that the site meets the criteria in §13.33(a) or (b) of this title (relating to Criteria for designating Site-MUPs) [**Designating Sites Serving Medically Underserved Populations**]; and

(4) (No change.)

(b) (No change.)

(c) Change in location of a designated site. A Site-MUP designation remains in effect if an applicant verifies that the new site remains in the original service area and provides the same services and staffing and serves the same populations that were originally used to designate the site under subsection (a)(1) or (2) of this section.

(d) [(c)] If a site is determined ineligible based on the criteria defined in §13.33 of this title (relating to Criteria for Designating Site-MUPs) [**Sites Serving Medically Underserved Populations**], the department will notify the applicant in writing.

(e) [(d)] Applications should be directed to the Health Professions Resource Center, Center for Health Statistics, Department of State Health Services [**Director, Office of Policy and Planning, Texas Department of Health**], 1100 West 49th Street, Austin, Texas 78756-3199.

Legend: (Proposed New Rule)

Regular Print = Proposed New Language

SUBCHAPTER D. LIMITED LIABILITY CERTIFICATION.

§13.41. Limited Liability Certification.

(a) Purpose. These sections provide the criteria and procedures the department uses to determine a nonprofit hospital's or hospital system's eligibility for limited liability certification by the department.

(b) Authority. These sections are authorized by Health and Safety Code, §311.0456 (§311.0456), which requires the department to receive, determine eligibility, and certify limited liability status for nonprofit hospitals or hospital systems that meet the requirements of these sections.

(c) Definitions. Terms used in this subchapter have the following meanings, unless the context clearly indicates otherwise. Terms not defined have their common meanings.

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

(2) Charity care--Is defined in Health and Safety Code, §311.031(2).

(3) Net patient revenue--Is defined in Health and Safety Code, §311.042(8).

(d) Eligible Entities. This section applies to a nonprofit hospital and hospital system that:

(1) meets the definition of nonprofit hospital in the Health and Safety Code, §311.042(9)(A); or

(2) is a corporation certified by the Texas Medical Board as a nonprofit organization under Occupations Code, §162.001, whose sole member is a qualifying hospital or hospital system.

(e) Certification Criteria. A nonprofit hospital or hospital system that satisfies the eligibility criteria under this section must additionally meet the following certification criteria:

(1) provide charity care in an amount equal to or at least 8% of net patient revenue during the most recent fiscal year of the hospital or system; and

(2) provide at least 40% of the total charity care provided in the county in which the hospital is located.

(A) Charity care for purposes of this section is determined by the department by checking the report submitted by the hospital or system under the Health and Safety Code, §311.033 and the statement of community benefits and charity care submitted by the nonprofit hospital or hospital system under Health and Safety Code, §311.045.

(B) If a report under §311.033 is not available for all hospitals in a county in which a nonprofit hospital meeting the requirement in paragraph (1) of this subsection is requesting certification, the department shall determine the eligibility of the hospital or hospital system using other sources of verified charity care information available at the time of certification.

(f) Mandatory Submission Deadline. Not later than May 31 of each year for which certification is sought, a nonprofit hospital or hospital system must submit a written request for certification stating that the hospital or system is eligible for certification. Reports submitted after May 31 of each reporting year will not be considered for certification, and exceptions to the deadline will not be granted.

(g) Duties of the Department. The department will determine whether a hospital or hospital system is an eligible entity and meets the certification criteria not later than December 31 of the year in which the department receives the request.

(h) Effective Date of Certification. A certification issued under this section to a nonprofit hospital or hospital system takes effect on December 31 of that year for which certification is issued and expires on the anniversary of that date.

(i) Effect of Certification. Section 311.0456 describes the effect of certification on liability for noneconomic damages.

Legend: (Proposed Amendments)

Single Underline = Proposed New Language

[Bold Print and Brackets] = Current language proposed for deletion

Regular Print = Current Language

SUBCHAPTER F. MEDICALLY UNDERSERVED AREAS AND RESIDENT PHARMACISTS.

§13.61. Medically Underserved Areas and Resident Pharmacists

(a) This section implements the responsibility of the Department of State Health Services (department) **[Texas Department of Health]** to define the term "medically underserved areas" under the Education Code, §61.924 **[\$61.854]**. That section provides that each college of pharmacy shall give priority consideration to an applicant for a resident pharmacist position who demonstrates a willingness to practice pharmacy in medically underserved areas of this state, as defined by the department **[Texas Department of Health]**.

(b) The term, "medically underserved areas," is defined as meeting any of the criteria:

(1) designated by the United States Secretary of Health and Human Services (secretary) as a whole county or partial county Health Professional Shortage Area (HPSA) **[an area]** in a metropolitan or non-metropolitan area of Texas (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the secretary **[the United States Secretary of Health and Human Services (secretary)]** determines has a primary care physician shortage and which is not reasonably accessible to an adequately served area as delineated in 42 United States Code (U.S.C.), §254e (42 Code of Federal Regulations (C.F.R.), Part 5);

(2) designated by the secretary as a population group HPSA which the secretary determines to have **[such]** a primary care physician shortage as delineated in 42 U.S.C., §254e (42 C.F.R. Part 5);

(3) designated by the secretary as a facility HPSA for a public or nonprofit private medical facility or other facility which the secretary determines has **[such]** a primary care physician shortage as delineated in 42 U.S.C., §254e (42 C.F.R., Part 5); or

(4) designated by the secretary as an area with a medically underserved population **(MUP)** **[designated by the secretary as]** and having a shortage of primary care physicians and personal health services as defined in 42 U.S.C., §254c (42 C.F.R., Part 491.5, Subpart A).

Rule Text of Repealed Sections:

~~§13.12. Scope.~~

The scope of these sections is to describe the criteria and procedures which the department will use in implementing data collection, dissemination, and reporting requirements. These sections will cover the collection and dissemination of data from the public or private hospitals that are included in the definition of the term "health care facilities" in the Health and Safety Code, Chapter 104, Subchapter A. The remaining entities included in the definition of the term "health care facilities" are not covered by these sections. If data covered by these sections will be collected from a public or private hospital that is a general or special hospital licensed under the Health and Safety Code, Chapter 241; a private mental hospital licensed under the Health and Safety Code, Chapter 577; or a treatment facility licensed under the Health and Safety Code, Chapter 464, the data will be collected under authority of and in compliance with the requirements of the Health and Safety Code, Chapters 104 and 311.

~~§13.20. Open Records Request Procedures.~~

- ~~(a) The Texas Department of Health (department) will provide non-confidential information upon receipt of written request and payment for the cost of copies as determined by the department and the General Services Commission.~~
- ~~(b) Individuals may review non-confidential information on the department's premises during normal business hours by scheduling an appointment at least one day in advance of the desired review. Individuals must complete their review of the information within 10 days or submit a written request to the department to obtain additional time to review the information.~~
- ~~(c) The department will notify the requester in writing if the requested information is unavailable at the time of the request and establish a date within a reasonable period of time in which the information will be available for inspection or duplication.~~

~~§13.41. Purpose and Authority.~~

- ~~(a) Purpose. These sections provide the criteria and procedures the department uses to determine a non-profit hospital's or hospital system's eligibility for limited liability certification by the department.~~
- ~~(b) Authority. These sections are authorized by Health and Safety Code, §311.0456, which requires the department to receive, verify and certify limited liability status for non-profit hospitals or hospital systems that meet the requirements of these sections.~~

~~§13.42. Definitions.~~

Terms used in this subchapter have the following meanings, unless the context clearly indicates otherwise. Terms not defined have their common meanings.

- ~~–(1) Department—The Texas Department of Health.~~
- ~~–(2) Charity care—Is defined in Health and Safety Code, §311.031(2).~~
- ~~–(3) Net patient revenue—Is defined in Health and Safety Code, §311.042(8).~~
- ~~–(4) Non-profit hospital—Is defined in Health and Safety Code, §311.042(9)(A).~~
- ~~–(5) Non-economic damages—Is defined in Civil Practices and Remedies Code, §41.001(12).~~

~~§13.43. Eligible Entities.~~

~~These sections apply to non-profit hospitals and non-profit hospital systems that:~~

- ~~—(1) meet the community benefits and charity care requirements of Health and Safety Code, §311.045; or~~
- ~~—(2) are corporations certified by the Texas State Board of Medical Examiners as non-profit organizations under Occupations Code, §162.001, whose sole member is a qualifying hospital or hospital system.~~

~~§13.44. Certification Criteria.~~

~~A non-profit hospital or hospital system that satisfies the eligibility criteria under §13.43 of this title (relating to Eligible Entities) must additionally meet the following certification criteria:~~

- ~~—(1) provide charity care in an amount not less than 8% of net patient revenues for the preceding fiscal year; and~~
- ~~—(2) provide not less than 40% of the total charity care provided in the county in which the hospital is located.~~
 - ~~—(A) Total charity care for the county for purposes of this section is determined by the department based on the most recent completed and audited prior fiscal year reports submitted by all reporting hospitals under Health and Safety Code, §311.033 (§311.033).~~
 - ~~—(B) Hospitals that are otherwise exempted from the reporting requirements of §311.033, by Health and Safety Code, §311.039, must submit §311.033 reports to be considered for certification by the department under these sections.~~

~~§13.45. Mandatory Submission Deadline. Not later than April 30 of each year for which certification is sought, an eligible entity must submit a report, based on its most recent completed and audited fiscal year, stating that the hospital or system is eligible for certification. Reports submitted after April 30 of each reporting year will not be considered for certification, and exceptions to the deadline will not be granted.~~

~~§13.46. Duties of the Department.~~

- ~~(a) The department will verify that all hospitals or systems that have submitted reports within the submission deadline meet the certification criteria not later than May 31 of the year in which the department receives the report.~~
- ~~(b) The department will compare the report under these sections against the reporting requirements under Health and Safety Code, §311.046, for accuracy and completeness.~~
- ~~(c) The department will certify those hospitals or systems that meet all requirements of these sections.~~
- ~~(d) The department will make available to the public, on request, a list of all certified hospitals and hospital systems, and maintain the list on the department's Internet website.~~

~~§13.47. Effective Date of Certification. A certification under these sections takes effect on May 31 of the year for which certification is issued, regardless of the date the department issues the~~

~~certification. The certification expires on May 31 of the following year, regardless of the date the department issues the certification.~~

~~§13.48. Effect of Certification.~~

~~(a) The total combined limit of liability of a hospital or system certified under these sections for non-economic damages for a cause of action that accrues during the period that the hospital or system is certified is subject to the limitations specified by Civil Practices and Remedies Code, §101.023(b).~~

~~(b) Civil Practices and Remedies Code, §101.023(c), does not apply to a hospital or system certified by the department under these sections.~~