

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 1. Texas Board of Health
Subchapter N. Historically Underutilized Businesses
Amendment §1.171

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes an amendment to §1.171, concerning procedures and policies of the Department of State Health Services relating to historically underutilized businesses (HUBs).

BACKGROUND AND PURPOSE

The amendment is necessary to ensure that the rule is current and reflects the recent consolidation of health and human service agencies.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Section 1.171 has been reviewed, and the department has determined that reasons for adopting the section continue to exist because rules on this subject are required by the Government Code, §2161.003.

SECTION-BY-SECTION SUMMARY

The agency's name is changed from the Texas Department of Health to the Department of State Health Services. The reference to the rules of the General Services Commission is updated to reflect the current name, the Texas Building and Procurement Commission (TBPC). Finally, TBPC adopted one additional rule and the Texas Administrative Code (TAC) reference is changed to include all rules currently adopted by TBPC regarding the HUB program.

FISCAL NOTE

Wilson Day, Bureau Chief, has determined that for each year of the first five-year period that the amendment will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Wilson Day has also determined that there are no anticipated economic costs to small businesses or micro-businesses required to comply with the section as proposed because the agency already complies with the rules established by the Texas Building and Procurement Commission. There are no anticipated economic costs to persons who are

required to comply with the section as proposed. There will be no impact on local employment.

PUBLIC BENEFIT

Wilson Day has also determined that for each year of the first five years the section is in effect the public will benefit from the adoption of the section. The public benefit anticipated as a result of enforcing the section is to prevent duplication and redundancy between department rules, policies and procedures.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Julienne Sugarek, Special Assistant to the Chief Financial Officer, Office of Chief Financial Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/458-7111, ext. 6815. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

STATUTORY AUTHORITY

The proposed amendment is authorized by the Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

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

LEGAL CERTIFICATION

The proposed rule has been thoroughly reviewed by legal counsel for the department and has been determined to be a valid exercise of HHSC's legal authority under Government Code, §531.0055 (e) and the department's legal authority to implement or enforce under Tex. Health and Safety Code, ch. 1001.

Legend = (Proposed Amendments)

Single Underline = Proposed new language

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

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§1.171. Historically Underutilized Business (HUB) Program.

In accordance with the Government Code, §2161.003, the [**Texas**] Department of State Health Services (department) adopts by reference the rules of the Texas Building and Procurement Commission (TBPC) [**General Services Commission (GSC)**] found at Title 1 Texas Administrative Code §§111.11-111.28[**111.27**] concerning the Historically Underutilized Business (HUB) Program. For purposes of implementing the TBPC [**GSC**] rules at the department, references to "state agency" or "agency" shall be considered to be a reference to the department. This rule applies to the department's HUB program and to other state agencies for which the department administers the HUB program.

Legend = (Proposed Repeals)

Regular Print with Strikethrough = Proposed repeal language

~~§460.201. Definitions.~~

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

~~–(1) Council—The state agency known as the Texas Health Care Information Council.~~

~~–(2) Donation—A gift of property, including money, or services to the Council.~~

~~–(3) Donor—An individual, not an employee or officer of the Council, or an organization that gives or offers to give a donation to the Council.~~

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~~–(4) Employee—A person employed by the Council on a full time or part time basis, including volunteers, for purposes of this section only.~~

~~–(5) Officer—The Council's executive director or the appointed members of the Council.~~

~~–(6) Purpose of the Donation—Description regarding the terms of acceptance and distribution or usage of donation.~~

~~§460.202 Administration and Investment of Funds~~

~~(a) Donated funds shall be deposited into the Council's Biennial Operating Budget and used according to the terms of acceptance of the donation, as stated in §1301.54 (b) of this title (relating to Procedure for Acceptance of Donations).~~

~~(b) Donated property or services shall be used according to the terms of acceptance of the donation, as stated in §1301.54(b) of this title.~~

~~§460.203. Relationships.~~

~~(a) Approved Relationships.~~

~~–(1) An officer or employee may serve as an officer or director of a donor, except as set forth in subsection (b)(2) of this section.~~

~~–(2) An officer or employee may receive compensation for services rendered to a donor, except as set forth in subsection (b)(3) and (4) of this section.~~

~~(b) Disapproved Relationships.~~

~~-(1) No agency employee or property may be used by a donor.~~

~~-(2) No officer or employee who serves as an officer or director of a donor shall vote on or otherwise participate in any measure, proposal, or decision pending before the donor if the Council might reasonably be expected to have an interest in such measure, proposal, or decision.~~

~~-(3) No employee shall accept employment from or engage in any business or professional activity with a donor which the employee might reasonably expect would require or induce the employee to disclose confidential information acquired by reason of the person's official position.~~

~~-(4) No employee shall accept employment or compensation from a donor which could reasonably be expected to impair the employee's independence of judgment in the performance of official duties.~~

~~-(5) No employee shall make personal investments in association with a donor which could reasonably be expected to create a substantial conflict between the employee's private interest and the interest of the Council.~~

~~-(6) No officer or employee shall accept or solicit any donation, gift, favor, or service from a donor that might reasonably tend to influence the exercise of official conduct.~~

~~-(7) No officer or employee shall intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised official powers on behalf of a donor or for having performed official duties in favor of a donor.~~

~~-(8) The Council shall not solicit or accept a donation from a person required to provide data as written in the Texas Health and Safety Code, Chapter 108 or a person who or a business entity that provides goods or services to the Council for compensation.~~

~~-(9) The Council shall not solicit or accept any donation, gift or benefit from a person whom the Council has litigation pending or contemplated.~~

§460.204. Procedure for Acceptance of Donations

~~(a) Donations of a value of \$500 or more shall be accepted by a majority vote of the Council in an open meeting.~~

~~(b) The minutes of the meeting shall reflect the name of the donor, a description of the donation, and the purpose of the donation.~~

~~(c) The Council will issue a certificate of acceptance to the donor stating the date accepted, a description of the donation and the purpose of the donation.~~

~~§460.211. Historically Underutilized Business (HUB) Program.~~

~~The Texas Health Care Information Council adopts the rules of the General Services Commission relating to the Historically Underutilized Business (HUB) Program and codified at 1 Texas Administrative Code, Part V, Chapter 111, Subchapter B, §§111.11-111.16.~~