

Department of State Health Services
Agenda Item for State Health Services Council
April 12, 2007

Agenda Item Title: Repeal 25 TAC §417.151 - 417.160, Rules concerning polices and procedures for donating and completing permanent improvements.

Agenda Number: 5a

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

Volunteer Services Councils at the State Hospitals have worked in collaboration with hospitals since 1958 to determine and donate permanent improvements. A permanent improvement is defined as a state hospital improvement that requires construction or alteration of the physical plant infrastructure, or an improvement consisting of landscaping. Examples of permanent improvements built in the past include chapels, swimming pools, miniature golf courses, and greenhouses. The most recent improvement projects consist of landscaping, structures to provide for outside activities, replacing a chapel roof and carillons, and construction of a Village Square.

The rules proposed for repeal, describe the review and approval of proposed permanent improvements, acknowledging and accepting permanent improvements donations, and recording and maintaining official records of all improvement proposals and improvement acknowledgements of acceptance.

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 §417.151 – 417.160 have been reviewed and the department has determined that reasons for adopting the sections do not continue to exist because no rules on this subject are required.

Summary: Rule §417.151 – 417.160 will be replaced by a new DSHS Permanent Improvement Donation policy, which provides an up to date, reorganized, and clarified process for reviewing and approving proposed permanent improvements. The new policy will also provide a process for the department to acknowledge the acceptance of permanent improvements donated by recording and maintaining official records of all improvement proposals and improvement acknowledgements of acceptance.

Persons and entities affected by the existing rule are all DSHS employees who are offered a DSHS permanent improvement donation; including state hospital Community Relations Directors or designees, state hospital Superintendents, Consumer Affairs Office, State Hospital Section Director, Office of General Counsel, Assistant Commissioner Mental Health and Substance Abuse Services, Chief Financial Officer or designee, Deputy Commissioner and the DSHS Commissioner.

The DSHS Permanent Improvement Donation policy outlines approval process as follows:

- State hospital superintendents will approve improvement proposals valued at less than \$500;
- Assistant Commissioner will approve improvement proposals valued from \$500 - \$9,999.99;
- DSHS Commissioner will approve improvement proposals valued at \$10,000 or above;
- Office of the General Counsel will determine if the donor is a party in a contested case or litigation before

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 417. TDMHMR AND FACILITY RESPONSIBILITIES
Subchapter D. Permanent Improvements Donated by Individuals or Community Groups
Repeal §§417.151 - 417.160

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §417.151 – 417.160 concerning the polices and procedures for donating and completing permanent improvements.

BACKGROUND AND PURPOSE

The rules describe the review and approval of proposed permanent improvements, acknowledging and accepting permanent improvements donations, and recording and maintaining official records of all improvement proposals and improvement acknowledgements of acceptance. A permanent improvement is defined as a state hospital improvement that requires construction or alteration of the physical plant infrastructure, or an improvement consisting of landscaping.

These rules will be replaced by a new internal department Permanent Improvement Donation policy, which provides an up-to-date, reorganized, and clarified process.

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 §417.151 – 417.160 have been reviewed and the department has determined that reasons for adopting the sections do not continue to exist because no rules on this subject are required.

SECTION-BY-SECTION SUMMARY

The repeal of §§417.151 – 417.160 is necessary because the internal policy will now provide a process for review, approval, acknowledgement, and recording of permanent improvement donations.

FISCAL NOTE

Rosamaria Murillo, Director, Consumer Affairs Unit, has determined that for each year of the first five-year period that the sections are no longer in effect, there will be no fiscal implications to the state or local governments as a result of the repeal of the sections.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Murillo has also determined that there are no anticipated economic costs to small businesses, micro-businesses or persons because the sections are no longer necessary and business practices will not be altered in order to comply with the proposed repeal of the sections. There will be no impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Murillo has also determined that for each year of the first five years the repeal of the sections is in effect, the public will benefit from the adoption of the repeal. The public benefit anticipated is to eliminate possible confusion caused by outdated policies and procedures located in the rules.

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Charlmaine Ferguson, Consumer Affairs Unit, Center for Consumer and External Affairs, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/458-7404, extension 6605 or by email to charlmaine.ferguson@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Cathy Campbell, 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 repeal is authorized under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The proposed repeal affects the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531.

Sections for repeal.

§417.151. Purpose.

§417.152. Application.

§417.153. Definitions.

§417.154. Permanent Improvement Process.

§417.155. Permanent Improvement Approval.

§417.156. Responsibilities of the VSC Board, VSC Chair, and PI Committee.

§417.157. Dedicated Construction Account Requirements.

§417.158. Accepting an Improvement.

§417.159. References.

§417.160. Distribution.

Legend: (Repealed Rule)

~~§417.151. Purpose.~~

~~The purpose of this subchapter is to establish policies and procedures for donating and completing a permanent improvement.~~

~~§417.152. Application.~~

~~The provisions of this subchapter apply to situations in which a donor proposes to donate a permanent improvement.~~

~~§417.153. Definitions.~~

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

~~(1) Asset Management—The Central Office division whose staff are responsible for overseeing TDMHMR's real property.~~

~~(2) Board—The Texas Board of Mental Health and Mental Retardation.~~

~~(3) Business entity—A sole proprietorship (including a person), partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized by law.~~

~~(4) Community group—A volunteer services council that is affiliated with TDMHMR or a group of people associated with an organization (e.g. civic, fraternal, corporate, religious, social, service, community, or educational).~~

~~(5) Construction—The implementation of a physical improvement (e.g., erecting, remodeling, renovating, or altering a building or addition thereto, gazebo, pavilion, road, sidewalk, fountain, or pond) and/or installing or extending a building system (e.g., roofing, mechanical, plumbing, or electrical system) that is integral to the durability and habitability of a building (e.g., air conditioning units, water or wastewater distribution lines, electrical wiring located in walls or underground, and subflooring or foundation work).~~

~~(6) Construction documents—Construction drawings, specifications, and all addenda issued prior to, and all modifications issued after execution of the contract.~~

~~(7) Dedicated construction account—A unique, restricted interest bearing account insured by an agency of the federal government that is established for the sole purpose of ensuring that sufficient funds are in place prior to initiating construction of a permanent improvement.~~

~~-(8) Donor A person, community group, or business entity who wants to donate a permanent improvement.~~

~~-(9) Director, facility community relations The staff person who is responsible for coordinating the community relations functions, volunteer programs, and fundraising at a facility.~~

~~-(10) Endowment fund A permanent, restricted fund established and maintained by the volunteer services council to fund, by generating interest income from the principal fund, the ongoing operating expenses for a specific permanent improvement.~~

~~-(11) Facility A state school, state hospital, state center, or other real property, except Central Office, that is operated by the Texas Department of Mental Health and Mental Retardation (TDMHMR).~~

~~-(12) Facility chief executive officer (CEO) The chief administrator of a facility.~~

~~-(13) Landscaping An improvement involving the systematic installation of plant materials (e.g., trees, shrubs, grass, blooming plants, irrigation systems, and/or grading, clearing, or other alteration of the existing topography and composition of the land).~~

~~-(14) Local project manager A facility staff person designated by the permanent improvement committee who acts on behalf of the permanent improvement committee in dealing with the design professional and contractor for the duration of the improvement's construction.~~

~~-(15) Permanent improvement (improvement) A facility improvement that requires construction or an improvement consisting of landscaping.~~

~~-(16) Permanent improvement committee (PI committee) The committee that is appointed by the executive committee of the facility's volunteer services council for the purpose of overseeing and/or donating a permanent improvement.~~

~~-(17) SMHMRFs State Mental Health and Mental Retardation Facilities.~~

~~-(18) TDMHMR The Texas Department of Mental Health and Mental Retardation.~~

~~-(19) Volunteer services council (VSC) A facility's 501(c)(3) organization that is formed for generating resources on behalf of the facility and to appoint a permanent improvement committee to implement permanent improvements.~~

~~-(20) Volunteer services council (VSC) board The board of directors of the facility's volunteer services council.~~

~~-(21) Volunteer services council (VSC) chair The primary officer of the board of directors of the facility volunteer services council, elected according to the VSC bylaws.~~

~~§417.154. Permanent Improvement Process.~~

~~(a) The facility CEO, with assistance from the director, facility community relations, and the VSC chair, must submit a written description of the proposed permanent improvement (improvement) by completing and submitting the Permanent Improvement Concept form referred to in §417.159 of this title.~~

~~(b) If the concept is approved by the commissioner or designee as described in §417.155 of this title (relating to Permanent Improvement Approval), the facility CEO with assistance from the director, facility community relations, and the VSC chair, submit a completed Permanent Improvement Proposal form, which is referred to in §417.159 of this title (relating to References).~~

~~(c) The director, facility community relations, or VSC chair may consult with the donor throughout all phases of the review and approval process, including:~~

- ~~-(1) the proposal review process;~~
- ~~-(2) the design, fundraising, and construction review process; and~~
- ~~-(3) the acceptance process.~~

~~(d) If requested by the facility CEO, the donor must establish an endowment fund for ongoing maintenance and support for the improvement.~~

~~§417.155. Permanent Improvement Approval.~~

~~The commissioner or designee must approve all phases of the Permanent Improvement Process as described in the *Community Relations Program Manual*, permanent improvements section.~~

~~§417.156. Responsibilities of the VSC Board, VSC Chair, and PI Committee.~~

~~(a) Following the approval of the proposal, the executive committee of the facility's volunteer services council (VSC) board of directors may act as the PI committee or may appoint a PI committee for each improvement, which comprises:~~

- ~~-(1) VSC members who are individuals from the community; and~~
- ~~-(2) facility staff who are nonvoting members of the PI committee.~~

~~(b) The PI committee must:~~

~~(1) provide adequate, sufficient documentation prior to initiating construction that funds sufficient to pay for the improvement have been deposited in a dedicated construction account; and~~

~~(2) implement the improvement according to the phases described in §417.154(c) of this title relating to (Permanent Improvement Process) and the *Community Relations Program Manual*.~~

~~§417.157. Dedicated Construction Account Requirements.~~

~~(a) The VSC chair and a member of the PI committee or a designee from the VSC who is not an employee must be designated as co-signers on the dedicated construction account.~~

~~(b) If conditions warrant, the commissioner or designee may require that the dedicated construction account be established with a third-party escrow agent.~~

~~§417.158. Accepting an Improvement.~~

~~(a) Upon completing the improvement, the VSC chair or designee notifies the commissioner in writing that the PI committee is ready to convey the improvement to the state.~~

~~(b) The commissioner acknowledges the acceptance of the improvement in writing to the facility CEO, the VSC chair, and the donor.~~

~~§417.159. References.~~

~~(a) Reference is made to the:~~

~~(1) Permanent Improvement Concept form;~~

~~(2) Permanent Improvement Proposal form; and~~

~~(3) *Community Relations Program Manual*.~~

~~(b) Copies of the forms described in subsection (a) of this section are in the *Community Relations Program Manual*. Copies of the forms and the *Community Relations Program Manual* are available from TDMHMR, Community Relations, P.O. Box 12668, Austin, TX 78711-2668, (512) 454-3761.~~

~~§417.160. Distribution.~~

~~(a) The subchapter is distributed to the board, commissioner, medical director; deputy commissioners for community programs and finance and administration; directors, SMHMRFs; Central Office program staff; and facility CEOs.~~

~~(b) The facility CEO is responsible for disseminating this subchapter to appropriate staff.~~