

**Department of State Health Services
Council Agenda Memo for State Health Services Council
January 22, 2010**

Agenda Item Title: Amendments to rules and new rules concerning fees and procedures for issuance of criminal history evaluation letters in the perfusionist, sanitarian, code enforcement officer, respiratory care practitioner, optician, massage therapist, chemical dependency counselor, and medical radiologic technologist regulatory programs

Agenda Number: 5e

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: A number of professional regulatory programs are located in the Professional Licensing and Certification Unit, Health Care Quality Section, Division for Regulatory Services, including the licensing programs for perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, chemical dependency counselors, and medical radiological technologists.

The purpose of these programs is to regulate the practice of each profession by issuing and renewing licenses, receiving and investigating consumer complaints, and imposing disciplinary action or penalties when violations of the regulatory law or rules are proven.

The programs are measured for effectiveness through the legislative performance measures for the Health Care Professionals strategy, and through reporting on licensing and enforcement activity to the Health Professions Council. The programs are funded through general revenue and each program covers its costs through licensing fees.

Summary: The purpose of the amendments and new rules is to establish administrative procedures to evaluate, upon request, the criminal history of potential applicants to determine if they are ineligible to hold a license. The amendments and new rules will allow potential license applicants to avoid unnecessary hardship or costs if their criminal history is a ground for license ineligibility. These evaluations will occur before the potential applicants enter or complete a preparatory educational program or licensure examination leading to licensure, thereby, allowing applicants to avoid unnecessary hardship or costs.

The rules comply with House Bill (HB) 963, 81st Legislature, Regular Session, 2009, which amended Occupations Code, Chapter 53. The bill authorizes the collection of a fee for providing potential applicants with a criminal history evaluation letter. All state agencies that issue licenses or certificates to engage in a particular occupation must adopt rules necessary to administer the new provisions by September 1, 2010.

The rules allow DSHS to prescreen an individual's criminal history, upon request, prior to enrolling in a training program or taking a licensure examination. DSHS will require a fee of \$50 to screen these persons and it is estimated that 195 persons in the applicable licensing programs will seek this evaluation per year.

Since professional licensing programs routinely perform criminal history backgrounds checks on potential license holders, the rules governing requests for criminal history evaluation letters will contribute to program effectiveness by identifying and notifying in advance certain potential applicants who are ineligible for licensure due to criminal history. The programs will track the number of requests received and the outcome of those requests within the program workload reporting structure.

Summary of Input from Stakeholder Groups: HB 963 applies to all state agencies that issue licenses, permits, or certifications. A number of interest groups were involved with the bill as it moved through the legislative process. The new procedures closely track the language of the bill and are being implemented using a standardized approach that will not vary among programs. Creating an administrative mechanism for a person to learn in advance if they are ineligible for licensure is not a controversial topic for stakeholder groups that represent health professions, and DSHS has no way to identify potential applicants who might utilize the rule. For these reasons, no additional stakeholder input was sought by DSHS.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #5e

Approved by Assistant Commissioner/Director: Kathryn C. Perkins **Date:** 11/25/09

Presenter: Cindy Bourland **Program:** Professional Licensing and Certification Unit **Phone No.:** 11/24/09

Approved by CPCPI: Carolyn Bivens **Date:** 11/24/09

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 140. Health Professions Regulation
Subchapter A. Perfusionists
Amendments §140.2
New §140.23
Subchapter C. Sanitarians
Amendments §140.103
New §140.120
Subchapter D. Code Enforcement Officers
Amendments §140.153
New §140.169
Subchapter E. Respiratory Care
Amendments §140.204
New §140.217
Subchapter G. Opticians
Amendments §140.277
New §140.286
Subchapter H. Massage Therapists
Amendments §140.301
New §140.377
Subchapter I. Licensed Chemical Dependency Counselors
Amendments §140.403
New §140.431
Subchapter J. Medical Radiologic Technologists
Amendments §140.504
New §140.523

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 §§140.2, 140.103, 140.153, 140.204, 140.277, 140.301, 140.403, and 140.504, and new §§140.23, 140.120, 140.169, 140.217, 140.286, 140.377, 140.431, and 140.523 concerning fees and procedures for issuance of criminal history evaluation letters in the perfusionist, sanitarian, code enforcement officer, respiratory care practitioner, optician, massage therapist, chemical dependency counselor, and medical radiologic technologist regulatory programs.

BACKGROUND AND PURPOSE

The purpose of the rules is to establish procedures to evaluate, upon request, the criminal history of potential applicants to determine if they are ineligible to hold a license. These evaluations will occur before the potential applicants enter or complete a preparatory educational program or licensure examination leading to licensure thereby allowing applicants to avoid unnecessary hardship or costs if their criminal history is a ground for license ineligibility. These rules establish fees and procedures for the issuance of a criminal history evaluation letter.

The proposed rules are necessary to comply with amendments made to Occupations Code, Chapter 53 by House Bill (HB) 963, 81st Legislature, Regular Session (2009). HB 963 authorizes the collection of a fee for providing potential applicants a criminal history evaluation letter. All state agencies that issue licenses or certificates to engage in a particular occupation must adopt rules necessary to administer the new provisions by September 1, 2010.

SECTION-BY-SECTION

The amendments to §§140.2, 140.103, 140.153, 140.204, 140.277, 140.301, 140.403, and 140.504, and new §§140.23, 140.120, 140.169, 140.217, 140.286, 140.377, 140.431, and 140.523 contain uniform language outlining provisions for fees and procedures for the issuance of criminal history evaluation letters in the perfusionist, sanitarian, code enforcement officer, respiratory care practitioner, optician, massage therapist, chemical dependency counselor, and medical radiologic technologist regulatory programs. The criminal history evaluation letter fee is \$50 for each of the programs and the procedures are uniform among the program rules. The procedures require a person making a request for the issuance of a criminal history evaluation letter to complete and submit a request form and the applicable fee. The rules require the department to make the requested determination regarding the person's eligibility for a license and issue a criminal history evaluation letter not later than the 90th day after the date the department received the request.

FISCAL NOTE

Cindy Bourland, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five-year period that the sections are in effect, there will be fiscal revenue implications to state government as a result of administering the sections that authorize the department to charge a fee for a voluntary prescreening evaluation request from persons who may be potentially ineligible for a license based upon criminal history. The department has determined to require a fee of \$50 to screen these persons and it is estimated that approximately 195 persons in the applicable licensing programs will seek this evaluation per year. There may be an increase in revenue to the state of \$9,750 each year for the next five fiscal years. There are no fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bourland has also determined that there will be no adverse effect on small businesses or micro-businesses as those businesses are not required to comply with the sections as proposed. Small businesses and micro-businesses will not be required to alter their business practices, since the request for a criminal history evaluation letter under the proposed rules applies only to individuals and is optional. There are anticipated economic costs to persons who choose to comply with the sections as proposed and the cost is \$50 for a person who requests a criminal history evaluation letter. There is no anticipated negative impact on local employment.

Government Code, §2006.002, requires an agency to prepare an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule may have an adverse economic impact on

small businesses. Only individuals who choose to request a criminal history evaluation letter under the proposed rules and will be required to pay the applicable fee. Because the proposed sections will not impose fees or other requirements on small businesses, the sections will not impose an adverse economic impact on small businesses.

PUBLIC BENEFIT

In addition, Ms. Bourland has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of administering the sections is to allow potential license applicants to avoid unnecessary hardship or costs by obtaining a criminal history evaluation letter concerning the individual's potential ineligibility for a license based on criminal history.

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 David Olvera, Program Director, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6768 or by email to david.olvera@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. 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, Lisa Hernandez, 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 and new rules are authorized by Occupations Code §§53.105, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the adoption of rules regarding fees for criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments and new rules affect Occupations Code, Chapters 53, 352, 455, 504, 601, 603, 604, 1952, and 1953; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

Legend: (Amendments and new rules)

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

Subchapter A. Perfusionists.

§140.2. Fees.

(a) The schedule of fees for licensure as a perfusionist or a provisional licensed perfusionist is as follows:

(1) – (9) (No change.)

(10) verification fee--\$10 per licensee; **[and]**

(11) retired perfusionist license renewal issued for a two-year term (in accordance with §140.12(f) of this title relating to License Renewal)--\$175; and

(12) criminal history evaluation letter fee - \$50.

(b) – (h) (No change.)

§140.23. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this subsection and the requestor's eligibility that the department has to investigate a person applying for a license.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

Subchapter C. Sanitarians.

§140.103. Fees.

(a) (No change.)

(b) The schedule of fees is as follows:

(1) – (7) (No change.)

(8) continuing education sponsor approval fee--\$100 per sponsor. Pre-approved providers are exempt from this fee; **[and]**

(9) exemption fee for retired sanitarians--\$150; and

(10) criminal history evaluation letter fee - \$50.

(c) – (e) (No change.)

§140.120. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a registration if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial registration or is planning to take an examination for an initial registration; and

(2) has reason to believe that the person is ineligible for the registration due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this subsection and the requestor's eligibility that the department has to investigate a person applying for a registration.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a registration, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

Subchapter D. Code Enforcement Officers.

§140.153. Fees.

(a) The schedule of fees is as follows:

(1) – (5) (No change.)

(6) examination fees:

(A) department administered--\$50; or

(B) administered by department's designee--the amount specified in the contract between the department and the designee, not to exceed \$50; **[and]**

(7) reexamination fee--\$50; and

(8) criminal history evaluation letter fee--\$50.

(b) – (e) (No change.)

§140.169. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a registration if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial registration or is planning to take an examination for an initial registration; and

(2) has reason to believe that the person is ineligible for the registration due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this subsection and the requestor's eligibility that the department has to investigate a person applying for a registration.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a registration, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

Subchapter E. Respiratory Care.

§140.204 Fees. The following fees are required to be paid to the department before any certificate or permit is issued. All fees shall be submitted in the form of a check or money order and are nonrefundable. The department may direct examination applicants to submit examination fees to the National Board for Respiratory Care, Inc. (NBRC).

(1) – (2) (No change.)

(3) Criminal history evaluation letter fee--\$50.

(4) [(3)] Any certificate holder whose check to the department is returned marked insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the check submitted to the department plus the returned check fee within 30 days of the date of receipt of the department's notice. Failure to comply with this requirement may be the grounds for disciplinary action, up to and including denial of the certificate holder application or the revocation of the certificate. If a certificate is issued or renewed or an application processed upon the submission of a check to the department, and if such check is later returned unpaid, the department may cancel the certificate or application if the certificate holder or applicant does not redeem the check in compliance with this section. The effect of such a cancellation shall be the same as if the application for renewal or for licensure had not been submitted.

(5) [(4)] If the department's notice, as set out in paragraph (4) [(3)] of this section, is returned unclaimed, the department shall mail the notice to the applicant or certificate holder by first class mail. If a money order or check for guaranteed funds is not received by the department's cashier within 30 days of the postmarked date on the second mailing, the approval or certificate issued shall be invalid. The department shall notify the applicant's or certificate holder's employer that the person has failed to comply with this section.

(6) [(5)] The department shall make periodic reviews of the fee schedule and recommend any adjustments necessary to provide sufficient funds to meet the expenses of the respiratory care practitioner certification program without creating an unnecessary surplus. Such adjustments shall be made through rule amendments approved by the Executive Commissioner of the Health and Human Services Commission.

§140.217. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a certificate if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial certificate or is planning to take an examination for an initial certificate; and

(2) has reason to believe that the person is ineligible for the certificate due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this subsection and the requestor's eligibility that the department has to investigate a person applying for a certificate.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a certificate, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

Subchapter G. Opticians.

§140.277. Fees.

(a) Schedule of fees. The fees are as follows:

(1) – (5) (No change.)

(6) duplicate certificate fee--\$20; **[and]**

(7) examination fee--the then current fee assessed by the Department of State Health Services' (department's) designee for the examination; and

(8) criminal history evaluation letter fee - \$50.

(b) – (e) (No change.)

§140.286. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a registration if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial registration or is planning to take an examination for an initial registration; and

(2) has reason to believe that the person is ineligible for the registration due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history

evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this subsection and the requestor's eligibility that the department has to investigate a person applying for a registration.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a registration, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

Subchapter H. Massage Therapists.

§140.301. Fees.

(a) – (j) (No change.)

(k) Criminal history evaluation letter fee--\$50.

§140.377. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this subsection and the requestor's eligibility that the department has to investigate a person applying for a license.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

Subchapter I. Licensed Chemical Dependency Counselors.

§140.403. Fees.

(a) The schedule of fees is:

(1) – (7) (No change.)

(8) clinical supervisor initial and renewal application and certification fee--\$20;
and

(9) criminal history evaluation letter fee--\$50.

(b) – (e) (No change.)

§140.431. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this subsection and the requestor's eligibility that the department has to investigate a person applying for a license.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

Subchapter J. Medical Radiologic Technologists.

§140.504. Fees.

(a) (No change.)

(b) The schedule of fees is as follows:

(1) – (23) (No change.)

(24) returned check fee--\$50; **[and]**

(25) retired medical radiologic technologist biennial renewal fee--\$25; and

(26) criminal history evaluation letter fee--\$50.

(c) – (j) (No change.)

§140.523. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a certificate if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial certificate or is planning to take an examination for an initial certificate; and

(2) has reason to believe that the person is ineligible for the certificate due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this subsection and the requestor's eligibility that the department has to investigate a person applying for a certificate.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a certificate, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.