

**Department of State Health Services  
Agenda Item for State Health Services Council  
January 31, 2007**

**Agenda Item Title:** Proposed amendments to 25 TAC §2.1, concerning the Preparedness Coordinating Council

**Agenda Number:** 5f

**Recommended Council Action:**

For Discussion Only

For Discussion and Action by the Council

**Background:**

The amendments are necessary to comply with Health and Safety Code, §11.016, which authorizes the Health and Human Services Commission to establish advisory committees; and Title 42 United States Code §247d-3a(b), which requires an advisory committee or other similar mechanism to provide the department with advice on public health preparedness. The PCC is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

**Summary:**

Amendments to §2.1 update legacy agency references; modify wording and punctuation of the rule for clarification; amendments to §2.1(f) increase the number of council members from 17 to 24 to include additional members required by the Centers for Disease Control and Prevention Pandemic Influenza cooperative agreement guidance; and amendments to §2.1(m) abolish the Hospital Preparedness Planning Committee and the Bioterrorism Preparedness and Response Committee.

**Summary of Stakeholder Input to Date (including advisory committees):**

The proposed amendments were presented to the Prevention Coordinating Council at their December 4, 2006, meeting. The Council approved the proposed amendments.

**Proposed Motion:**

Motion to recommend HHSC approval for publication of rules contained in agenda item 5f.

**Agenda Item**

**Approved by:** \_\_\_\_\_  
Debra Stabeno, Assistant Commissioner for Prevention & Preparedness

**Presented by:** Francesca Kupper **Title:** Strategic Preparedness Team member

**Program/Division:** Community Preparedness Section

**Contact Name/Phone:** Evelyn Shewmaker **Extension:** 6116

**Date  
Submitted**

12/13/2006

Title 25. HEALTH SERVICES  
Part 1. DEPARTMENT OF STATE HEALTH SERVICES  
Chapter 2. Emergency Preparedness  
Amendments §2.1

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 §2.1, concerning the Preparedness Coordinating Council (PCC).

BACKGROUND AND PURPOSE

The amendments are necessary to comply with Health and Safety Code, §11.016, which authorizes the Health and Human Services Commission to establish advisory committees; and Title 42 United States Code §247d-3a(b), which requires an advisory committee or other similar mechanism to provide the department with advice on public health preparedness. The PCC is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 2.1 has been reviewed and the department has determined that reasons for adopting the rule continue to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

Amendments to §2.1 update legacy agency references; modify wording and punctuation of the rule for clarification; amendments to §2.1(f) increase the number of council members from 17 to 24 to include additional members required by the Centers for Disease Control and Prevention Pandemic Influenza cooperative agreement guidance; and amendments to §2.1(m) abolish the Hospital Preparedness Planning Committee and the Bioterrorism Preparedness and Response Committee.

FISCAL NOTE

Martha McGlothlin, Section Director, Community Preparedness Section, has determined that for each year of the five-year period that the section will be in effect, there will be fiscal implications to state as a result of enforcing and administering the section as proposed. There is a potential fiscal impact for travel reimbursement of the additional seven PCC members (dependent upon the geographical location of the new members). The cost for travel reimbursement is unknown at this time, but is expected to be minimal. Travel expenses will be reimbursed through the Centers for Disease Control and Prevention Cooperative Agreement U90/CCU617001-07. There is no fiscal implications to local governments.

## SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. McGlothlin has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

## PUBLIC BENEFIT

In addition, Ms. McGlothlin has also determined that for each year of the five years that the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to better prepare the state to respond to public health emergencies.

## 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 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 rule 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 Trish Taylor, MC-1990, Community Preparedness Section, Division of Prevention and Preparedness, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/458-7122 or by e-mail to Trish.Taylor@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 rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

## STATUTORY AUTHORITY

The proposed amendment is authorized by Health and Safety Code, §11.016, which authorizes the Health and Human Services Commission to establish advisory committees; Title 42 United States Code §247d-3a(b), which requires an advisory committee or other similar mechanism to provide the department with advice on public health preparedness; 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 the Health and Safety Code, Chapter 1001.

The proposed amendment affects Health and Safety Code, Chapters 11 and 1001; and Government Code, Chapter 531.

Legend: (Proposed Amendment(s))

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

## §2.1. Preparedness Coordinating Council.

### (a) The council.

(1) The Preparedness Coordinating Council (PCC) [**(council)**] shall be appointed under and governed by this section.

(2) The PCC [**council**] is established under the Health and Safety Code, §11.016, which authorizes the Health and Human Services Commission (commission) [**board**] to establish advisory committees [**councils**] and Title 42 United States Code §247d-3a (b) which requires an advisory committee (or similar mechanism) to obtain input on preparedness planning.

(b) Applicable law. The PCC [**council**] is subject to the Government Code, Chapter 2110, concerning state agency advisory councils.

(c) Purpose. The purpose of the PCC [**council**] is to provide advice and assistance to the State Health Services Council (council) [**Board of Health (board)**] and the Department of State Health Services (department) in coordinating efforts to prepare the State [**state**] of Texas for bioterrorism attacks, other infectious disease outbreaks, and additional public health threats and emergencies.

### (d) Tasks.

(1) The PCC [**council**] shall advise the council [**board**] concerning rules relating to major public health preparedness issues.

(2) The PCC [**council**] will assist the department and the council [**board**] in coordinating preparedness and response planning and expenditures; [,] improving disease surveillance and detection; [,] developing epidemic response capabilities; [,] and addressing other public health emergency activities related to the department.

(3) The PCC [**council**] shall carry out any other tasks assigned by the council [**board**].

(e) PCC [**Council**] abolished. By January 1, 2011 [**2007**], the Executive Commissioner of the Health and Human Services Commission [**board**] will initiate and complete a review of the PCC [**council**] to determine whether the PCC [**council**] should be continued, consolidated with another council, or abolished. If the PCC [**council**] is not continued or consolidated, the PCC [**council**] shall be abolished on that date.

(f) Composition. The PCC [**council**] shall be composed of no more than 24 [**17**] members.

(1) The composition of the PCC [council] shall reflect a broad spectrum of key preparedness partners. [include 5 consumer representatives, and 12 non-consumer representatives.]

(2) The members of the PCC [council] shall be appointed by the Executive Commissioner of the Health and Human Services Commission. [commissioner of health (commissioner) as follows:]

**[(A) 5 consumers representing the interests of the general public;]**

**[(B) 12 non-consumer members, including the following:]**

**[(i) 3 representatives of local health departments or local governments;]**

**[(ii) 3 representatives from emergency management entities;]**

**[(iii) 3 representatives from community hospitals or other community health providers; and]**

**[(iv) 3 representatives from universities or health science centers.]**

(g) (No change.)

(h) Officers. The PCC [council] shall select from its members the presiding officer and an assistant presiding officer.

(1) The presiding officer shall serve until December 31 of each even-numbered year. The assistant presiding officer shall serve until December 31 of each odd-numbered year. Both the presiding officer and the assistant presiding officer may holdover until his or her replacement is elected by the PCC [council].

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

(3) If the office of presiding officer or assistant presiding officer becomes vacant, it may be filled by vote of the PCC [council].

(4) (No change.)

(5) The PCC [council] may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The PCC [council] shall meet only as necessary to conduct PCC [council] business.

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

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

(3) The PCC [council] is not a "governmental body" as defined in the Open Meetings Act.

(4) Each member of the PCC [council] shall be informed of a PCC [council] meeting at least five working days before the meeting.

(5) A simple majority of the members of the PCC [council] shall constitute a quorum for the purpose of transacting official business.

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

(7) The agenda for each PCC [council] meeting shall include an opportunity for any person to address the PCC [council] on matters relating to PCC [council] business. The presiding officer may establish procedures for such public comment, including a time limit on each comment.

(j) Attendance. Members shall attend PCC [council] meetings as scheduled. Members and subcommittee members shall attend meetings of subcommittees to which the members and subcommittee members are assigned.

(1) (No change.)

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

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

(k) Staff. Staff support for the PCC [council] shall be provided by the department.

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

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

(2) – (3) (No change.)

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

(5) Minutes of each PCC [council] meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the council [board] and each member of the PCC [council] within 30 days of each meeting.

(B) After approval by the PCC [council], the minutes shall be signed by the presiding officer.

(m) Subcommittees. **[The council shall have a Hospital Preparedness Planning Committee (HPPC) and a Bioterrorism Preparedness and Response Committee (BRPC).]** The PCC [council] may establish **[other]** subcommittees as necessary to assist the PCC [council] in carrying out its duties.

(1) **[With the exception of the HPPC and the BRPC,]** The [the] presiding officer shall appoint members of the PCC [council] to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer also may appoint nonmembers of the PCC [council] to serve on subcommittees, subject to the approval of the Executive Commissioner of the Health and Human Services Commission [Commissioner. The HPPC and the BRPC members shall be appointed by the Commissioner].

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the PCC [council].

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

(n) Statement by members.

(1) The commission, the council [board], the department, and the PCC [council] shall not be bound in any way by any statement or action on the part of any PCC [council] member or subcommittee member except when a statement or action is in pursuit of specific instructions from the commission, council [board], department, or PCC [council].

(2) The PCC [council] and its members or subcommittee members may not participate in legislative activity in the name of the commission, the council [board], the department, or the PCC [council] except with approval through the department's legislative process. PCC [Council] members are not prohibited from representing themselves or other entities in the legislative process.

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

(4) A PCC [council] member or subcommittee member should not disclose confidential information acquired through his or her committee membership.

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

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

(o) Reports to council [board]. The PCC [council] shall file an annual written report with the council [board].

(1) The report shall list the meeting dates of the PCC [council] and any subcommittees, the attendance records of its members, a brief description of actions taken by the PCC [council], a description of how the PCC [council] has accomplished the tasks given to the PCC [council] by the council [board], the status of any rules which were recommended by the PCC [council] to the council [board], and anticipated activities of the PCC [council] for the next year.

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

(3) The report shall cover the meetings and activities in the immediately preceding fiscal year and shall be filed with the council [board] each January. The report shall be signed by the presiding officer [commissioner].

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

(1) No compensatory per diem shall be paid to PCC [council] members or subcommittee members unless required by law.

(2) A PCC [council] member or subcommittee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each PCC [council] meeting.

(4) (No change.)