

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

Agenda Item Title: Amendments to rules, new rules, and a repeal of a rule concerning the regulation of training and certification of promotores or community health workers

Agenda Number: 5h

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Promotor(a) or Community Health Worker (CHW) Training and Certification Program is under the Office of Title V and Family Health within the Division of Family and Community Health Services. The CHW Program provides leadership to enhance the development and implementation of statewide training and certification standards for promotores/CHWs, instructors and sponsoring organizations of certified curricula. Currently, approximately 600 promotores/CHWs and 40 instructors are certified. Additionally, 14 sponsoring organizations have been approved to provide certified training to promotores/CHWs or instructors.

The Program collects and analyzes data related to the number of certified promotores/CHWs, as well as the number of instructors and sponsoring organizations approved to provide training to promotores/CHWs, to determine the effectiveness or success of the Program. Data related to the percentage of recertifications and expired or lapsed certifications is also analyzed to determine effectiveness of the Program and current procedures.

The program budget for state fiscal year 2010 is \$83,876 and is all state general revenue.

Summary:

The purpose of the amendments, new rules, and repeal is to increase clarity of the rules, provide better conformance to statute, and expand opportunities for promotores/CHWs to obtain the training and certification established by Health and Safety Code, Chapter 48. The rules improve the ability of the certification program to expedite the process of reviewing applications for certification of instructors and training programs. The new language addresses regulations necessary to administer the CHW Program.

The Program will continue to collect and analyze data related to the number of certified promotores/CHWs, as well as the number of instructors and sponsoring organizations approved to provide training to promotores/CHWs to assess the impact of the rules. Program progress will be indicated by an increase in the number of certified promotores/CHWs, as well as the number of certified instructors and sponsoring organizations.

Summary of Input from Stakeholder Groups:

The proposed rules were developed with input from the CHW Advisory Committee and various stakeholders in a variety of methods, including stakeholder forums in Houston, McAllen, El Paso, Fort Worth and Laredo; conference calls; and email. Stakeholder forums were hosted by Houston Community College, South Texas Promotora Association, El Paso Community College, University of North Texas Health Science Center and Gateway Community Health Center.

Stakeholders consisted of promotores/CHWs; instructors of CHWs; students in CHW training programs; and employers from academia, non-profit organizations, community-based organizations, faith-based organizations, clinics (including Federally Qualified Health Centers), hospital districts, state agencies and local health departments.

Among the suggestions incorporated were the following clarifications and changes:

- Definitions of promotor(a) or CHW, health and sponsoring institution;
- Shorter terms and more focused duties for Advisory Committee members;
- Certification and recertification requirements to enhance application processes for CHWs, instructors and sponsoring organizations of training programs;
- Methods for delivery of training to allow for distance learning; and
- Additional rules to address professional ethics, violations, complaints and subsequent actions.

Input indicated interest in a multi-tiered certification system that might include provisional certification and recognition for various levels of experience and education. The Program may consider tiers in the future, but due to limited resources, it is not feasible at this time.

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

Approved by Assistant Commissioner/Director: Evelyn Delgado **Date:** 12/4/09

Presenter: Sam Cooper **Program:** Promotor(a)/Community Health Worker Training & Certification Program **Phone No.:** 512-458-7111 ext 2184

Approved by CPCPI: Carolyn Bivens **Date:** 12/01/09

Title 25. HEALTH SERVICES

Part 1. DEPARTMENT OF STATE HEALTH SERVICES

Chapter 146. Training and Regulation of Promotores [**Promotores(as)**] or Community Health Workers

Amendments §§146.1 - 146.4, 146.6 - 146.10

New §§146.5, 146.11 and 146.12

Repeal §146.5

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 §§146.1 - 146.4, 146.6 - 146.10, new §§146.5, 146.11 and 146.12, and the repeal of §146.5, concerning the regulation of training and certification of promotores or community health workers.

BACKGROUND AND PURPOSE

Health and Safety Code, Chapter 48, requires the department to establish a program designed to train and educate persons who act as promotores or community health workers. This chapter also requires minimum standards for the certification of promotores or community health workers. These rules are reasonable and necessary to accomplish this legislative mandate.

The Promotor(a) or Community Health Worker Training and Certification Program provides leadership to enhance the development and implementation of statewide training and certification standards and administrative rules for the Promotor(a) or Community Health Worker (CHW) Training and Certification Program. The Promotor(a) or Community Health Worker Training and Certification Advisory Committee (committee) has provided advice to the Health and Human Services Commission and the department related to the recommendation of qualifying applicants as sponsoring institutions of training programs and training instructors. The committee has also provided advice to the Health and Human Services Commission and the department related to recommendations for new or amended rules for the Promotor(a) or Community Health Worker Training and Certification Program. This committee is a successor to the Promotora Program Development Committee mentioned in Health and Safety Code, §48.002(a) and §48.003(a). The committee is established under the Health and Safety Code, §11.016, which allows the Health and Human Services Commission to establish advisory committees. The committee 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). Sections 146.1 - 146.10 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

The proposed amendments, new rules, and repeal clarify the rules and improve the ability of promotores or community health workers to obtain the training and certification established by

Health and Safety Code, Chapter 48. Additionally, they improve the ability of the certification program to expedite the process of reviewing applications for certification of instructors and training programs.

SECTION BY SECTION SUMMARY

Amendments to §§146.1 - 146.4 add a definition and clarify other definitions; reflect changes to purpose, tasks and terms of the advisory committee; who is eligible for training and certification; and remove language specific to the contents of an application which may be included in program policy or procedure.

The repeal of §146.5 allows for better organization of the rules concerning application requirements.

The amendment to §146.6 concerns application requirements and procedures for sponsoring organizations. The amendment to §146.7 provides clarification related to types of certification and applicant eligibility requirements. Amended §146.8 reflects standards for approved curriculum for community health workers or instructors in the program. The amendments to §146.9 and §146.10 outline requirements for certificate renewal and continuing education.

New §§146.5, 146.11 and 146.12 provide clarification on reporting of change in name and address; information related to professional and ethical standards; and information related to violations, complaints, and subsequent actions respectively.

FISCAL NOTE

Isa Covio, Office of Title V and Family Health, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications for state and local government as a result of the sections as proposed. There may be impacts on such entities to the extent they choose to become involved as employers, sponsors, or education providers to promotores or community health workers, but such involvement is voluntary on their part.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

There is no adverse effect to small businesses or micro-businesses required to comply with the sections as proposed because small businesses and micro-businesses will not be required to alter their business practices. Persons seeking certification as promotores or community health workers or instructors may incur costs related to obtaining initial or continuing education. This cost will vary depending on where this education is obtained. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Ms. Covio has also determined that for each year of the first five years the sections are in effect, the public health benefits of the proposed rules include increased clarity of the rules, better

conformance to statute, and expanded opportunities for promotores or community health workers to obtain the training and certification established by Health and Safety Code, Chapter 48.

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 amendments, new rules, and repeal 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 may be submitted to the Promotor(a)/Community Health Worker Training and Certification Program, Office of Title V and Family Health, Department of State Health Services, 1100 West 49th Street, M-348, Austin, Texas 78756, telephone (512) 458-7111, extension 3500, or chw@dshs.state.tx.us. Comments on the proposed sections will be accepted for 30 days following publication 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 amendments, new rules and repeal are authorized under Health and Safety Code, §48.003, which requires the Texas Board of Health (board) to adopt rules that provide minimum standards and guidelines on training; §48.002, which allows the board to provide for exemption from certification by rule; §11.016, which allows the board to appoint advisory committees to assist the board in performing its duties; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the Texas Department of Health and the commissioner of health. The Texas Department of Health and the Texas Board of Health were abolished by Chapter 198, §§1.18 and 1.26, 78th Legislature, Regular Session, 2003. 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. Review of the sections implements Government Code, §2001.039.

The amendments, new rules and repeal affect Health and Safety Code, Chapters 11, 12, 48, and 1001; and Government Code, Chapters 531 and 2001.

Section for Repeal:

§146.5. Application Requirements and Procedures for Instructors.

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

§146.1. Definitions.

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

(1) (No change.)

(2) Applicant--A promotor(a) or community health worker who applies to the Department of State Health Services for a certificate of competence; an instructor who applies to the department to train promotores or community health workers; [,] or a sponsoring organization [institution or training program] who applies to the department to offer training approved by the department [or an instructor who applies to the department] to train promotores[promotores(as)] or community health workers.

(3) (No change.)

(4) Certificate [**of Competence**]--Certificate issued to a promotor(a) [Promotor(a)] or community health worker or instructor [certificates issued] by the Department of State Health Services.

(5) (No change.)

(6) Core Competencies--Key skills for promotores or community health workers required for certification by the department, including communication skills, interpersonal skills, knowledge base on specific health issues, service coordination skills, capacity-building skills, advocacy skills, teaching skills, and organizational skills.

(7) [(6)] Department--The Department of State Health Services.

(8) Executive Commissioner--Executive Commissioner of the Health and Human Services Commission.

(9) [(7)] Health--A state of complete physical, mental and social well-being where an individual or group [The extent to which an individual or group] is able to realize aspirations and satisfy needs, and to change or cope with the environment. Health is a resource for everyday life, not the objective of living; it is a positive concept emphasizing social and personal resources as well as physical capabilities. This definition is from the World Health Organization, "Ottawa Charter for Health Promotion, 1986," and is available at http://www.euro.who.int/aboutwho/policy/20010827_2 [http://www.who.dk/AboutWHO/Policy/20010827_2]

(10) [(8)] Certified Instructor--An individual approved by the department to provide instruction and training in one or more core competencies [public health education] to promotores **[promotores(as)]** or community health workers **[in an educational setting]**.

[(9) Instructor certification--An authorization to train or instruct promotores(as) or community health workers in public health education services.]

(11) [(10)] "Promotor(a)" or "Community Health Worker"--A person who, with or without compensation is a liaison between health care and social services, and the community. A promotor(a) or community health worker: is a trusted member, and has a close understanding of, the ethnicity, language, socio-economic status, and life experiences of the community served. A promotor(a) or community health worker assists people to gain access to needed services and builds individual, community, and system capacity by increasing health knowledge and self-sufficiency through a range of activities such as outreach, community health education and information, informal counseling, social support, and advocacy. [:**provides cultural mediation between communities and health and human service systems; informal counseling and social support; and culturally and linguistically appropriate health education; advocates for individual and community health needs; assures people get the health services they need; builds individual and community capacity; or provides referral and follow-up services.**]

(12) [(11)] Sponsoring organization [institution or training program]--An organization approved by the department to deliver a certified training curriculum to promotores or community health workers or instructors [approved educational, community health, training program or other program or facility that offers or intends to offer promotor(a) or community health worker training or instructor preparation].

[(12) Sponsoring institution or training program certification--An authorization to offer promotor(a) or community health worker training or instructor preparation.]

(13) Certified Training Curriculum--An educational, community health training curriculum approved by the department for the purpose of training promotores or community health workers or instructors.

§146.2. Promotor(a) or Community Health Worker Training and Certification Advisory Committee.

(a) - (b) (No change.)

(c) Purpose and tasks.

(1) The committee shall advise the Executive Commissioner concerning rules to implement standards adopted under the Health and Safety Code, Chapter 48, relating to the training and regulation of persons working as promotores or community health workers.

(2) The committee shall advise the department concerning guidelines and requirements relating to training and certification of promotores or community health workers, instructors, and sponsoring organizations.

(3) The committee shall review applications from sponsoring organizations, and recommend certification to the department if program requirements are met.

(4) The committee shall carry out any other tasks given to the committee by the Executive Commissioner.

[(c) Purpose. The purpose of the committee is to recommend new or amended rules for the approval of the Executive Commissioner of HHSC. The committee may also review applications and recommend to the department qualifying applicants as sponsoring institutions or training programs and instructors.]

[(d) Tasks.]

[(1) The committee shall advise the Executive Commissioner of HHSC concerning rules to implement standards adopted under the Health and Safety Code, Chapter 48, relating to the training and regulation of persons working as promotores(as) or community health workers.]

[(2) The committee may recommend to the department qualifying sponsoring institutions or training programs and instructors.]

[(3) The committee shall carry out any other tasks given to the committee by the Executive Commissioner of HHSC.]

(d) [(e)] Review and duration. By November 1, ~~2013~~ [2007], the Executive Commissioner [of HHSC] will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(e) [(f)] Composition. The committee shall be composed of nine members appointed by the Executive Commissioner [of HHSC]. The composition of the committee shall include:

(1) four ~~promotores~~ [certified promotores(as)] or community health workers currently certified by the department [or the equivalent];

(2) two public members which may include consumers of community health work services or individuals with paid or volunteer experience in community health care or social services;

(3) one member from the Texas Higher Education Coordinating Board, or a higher education faculty member who has teaching experience in community health, public

health or adult education and has trained promotores [**promotores(as)**] or community health workers; and

(4) two professionals who work with promotores [**promotores(as)**] or community health workers in a community setting, including employers and representatives of non-profit community-based organizations or faith-based organizations.

(f) [(g)] Terms of office. The term of office of each member shall be three [**six**] years, and the member may be reappointed once.

(1) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(2) Members shall be appointed for staggered terms so that the terms of three members will expire on January 1 of each [**even-numbered**] year.

(g) [(h)] Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

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

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

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

(1) A meeting may be called by agreement of department [**the Department of State Health Services (department)**] staff and either the presiding officer or at least three members of the committee.

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

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551. The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

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

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(i) [(j)] Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a 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, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

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

(4) The attendance records of the members shall be reported to the Executive Commissioner **[of HHSC]**. The report shall include attendance at committee and subcommittee meetings.

(j) [(k)] Staff. Staff support for the committee shall be provided by the department.

(k) ~~[(I)]~~ 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 committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee 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 committee meeting shall be taken by department staff and approved by the committee at the next scheduled meeting.

[(A) A draft of the minutes approved by the presiding officer shall be provided to the Executive Commissioner of HHSC and each member of the committee within 30 days of each meeting.]

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

(l) ~~[(m)]~~ Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

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

(m) ~~[(n)]~~ Statement by members.

(1) The Executive Commissioner **[of HHSC]**, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the Executive Commissioner **[of HHSC]**, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the Executive Commissioner [of HHSC], the department, or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee 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 committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee 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 committee 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.

(n) [(o)] Reports to the Executive Commissioner [of HHSC]. The committee shall file an annual written report with the Executive Commissioner [of HHSC].

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

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

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the Executive Commissioner [of HHSC] each January. It shall be signed by the presiding officer and appropriate department staff.

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

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms not later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state vouchers prepared by department staff.

§146.3. Applicability.

(a) (No change.)

(b) The provisions of this chapter apply to any promotor(a) or community health worker, and instructor, representing that he or she performs or will perform as a certified promotor(a) or community health worker or, trains or will train promotores [**promotores(as)**] or community health workers respectively. It also applies to any sponsoring organization who delivers a certified training curriculum [**institution or training program that will sponsor/provide or sponsors provides training programs**] for promotores [**promotores(as)**] or community health workers[, **who will expect certification under this chapter**].

(c) Certification [**Participation in a training and education program established**] under this section is voluntary for promotores [**promotores(as)**] or community health workers who provide services without receiving compensation, and mandatory for promotores [**promotores(as)**] or community health workers who provide services for compensation.

§146.4. Application Requirements and Procedures for Promotores [**Promotores(as)**] or Community Health Workers and Instructors.

(a) Purpose. The purpose of this section is to set out the application procedures for certification of promotores [**promotores(as)**] or community health workers and instructors.

(b) Application Requirements. [**Promotor(a) or community health worker certificate of competence.**]

(1) Unless otherwise indicated, an applicant must complete all required information and documentation on current official department forms and submit the required information and documentation electronically or in hard copy as specified by [**to**] the department.

(2) (No change.)

[(c) Required application materials. The application form shall contain the following items:]

[(1) specific personal data, birth date, current and previous promotor(a) or community health worker activity (if applicable), and any educational and training background;]

[(2) a statement that the applicant understands the Health and Safety Code, Chapter 48 and this chapter and agrees to abide by them;]

[(3) the applicant's permission to the department to seek any information or references which are material in determining the applicant's qualifications;]

[(4) a statement that the applicant, if issued a certificate, shall return the certificate and identification card(s) to the department upon the expiration, revocation, or suspension of the certificate;]

[(5) a statement that the applicant understands that the materials submitted become the property of the department and are nonreturnable (unless prior arrangements have been made);]

[(6) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information which is material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted any certificate or the revocation of any certificate issued;]

[(7) a statement that the applicant shall advise the department of his or her current mailing address within 30 days of any changes of address;]

[(8) the dated signature of the applicant certifying the truth of the information submitted; and]

[(9) the signature of the instructor, sponsoring institution or training program indicating successful completion of the promotor(a) or community health worker training and the date when the training was successfully completed.]

(c) [(d)] Application approval. The administrator shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (d) [(e)] of this section.

(d) [(e)] Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter [section];

[(B) has not successfully completed an approved competency-based promotor(a) or community health worker training;]

(B) [(C)] has failed or refused to properly complete or submit any application form(s) or has knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant's qualifications for certification;

(C) [(D)] has engaged in unethical conduct as defined in §146.11 of this title (relating to Professional and Ethical Standards); [or]

(D) has been convicted of a felony or misdemeanor directly related to the duties and responsibilities of a promotor(a) or community health worker or instructor as set out in §146.12 of this title (relating to Violations, Complaints and Subsequent Actions); or

(E) has developed an incapacity, which in accordance with the Americans with Disabilities Act, prevents the individual from practicing [practice of promotor(a) or community health worker service] with reasonable skill, competence, and safety to the public as the result of:

(i) an illness;

(ii) drug or alcohol dependency; or

(iii) another physical or mental condition or illness;

(2) If the administrator determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the disapproval and of the opportunity for re-application or **[for]** appeal;

(3) The applicant whose application has been disapproved under paragraph (1) **[one]** of this subsection shall be permitted to reapply after a period of not less than six months from the date of the disapproval and shall submit a current application satisfactory to the department, in [of] compliance with the then current requirements of this chapter and the provisions of the Health and Safety Code, Chapter 48 [Act].

[(4) The applicant whose application has been disapproved under paragraph (1) of the subsection shall be permitted to ask for a reconsideration in writing after a period of not less than six months from the date of the disapproval to the department.]

(4) [(5)] An applicant whose application has been disapproved may appeal the disapproval under the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(e) [(f)] Application processing. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and has been approved [accepted for filing] or that the application is deficient and additional specific information is required.

(1) Letter of approval [acceptance of application] for certification – no more than 90 days.

(2) Letter of application deficiency – no more than 90 days.

Legend: (Proposed New Rule)
Regular Print = Proposed New Language

§146.5. Changes of Name and Address.

(a) The certificate holder shall notify the department of changes in name, preferred mailing address, or place(s) of business or employment within 30 calendar days of such change(s).

(b) Before any certificate and identification cards will be issued by the department, notification of name changes must be mailed to the department and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name.

§146.6. Application Requirements and Procedures for Sponsoring Organizations [Institutions and Training Programs].

(a) Purpose. The purpose of this section is to set out the application procedures for certification of curricula from sponsoring organizations [institutions and training programs].

(b) Sponsoring organization [institution or training program] certificate.

(1) Unless otherwise indicated, an applicant must complete all required information and documentation of credentials on current official department forms and submit the required information and documentation electronically or in hard copy as specified by the department.

(2) A sponsoring organization may submit an application to request approval to use a certified curriculum from another sponsoring organization who has agreed to share the certified curriculum. In this situation, the application must include a description of changes, if any, to the certified curriculum.

(3) [(2)] The department shall send a notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

[(c) Required application materials. The application form shall contain the following items:]

[(1) specific organizational data, current and previous experience with training or sponsoring training for promotores(as) or community health workers, educational and training qualifications of staff, accrediting information, curricula and collateral materials, workplace assurances, registration policies and procedures for promotores(as) or community health workers. Applicants must meet the minimum eligibility requirements for sponsoring institutions or training program certification as set forth in §146.7(f) of this title (relating to Types of Certificates and Applicant Eligibility);]

[(2) a statement that the applicant understands Health and Safety Code, Chapter 48 and this chapter and agrees to abide by them;]

[(3) the applicant's permission to the department to seek any information or references which are material in determining the applicant's qualifications;]

[(4) a statement that the applicant, if issued a certificate, shall return the certificate(s) to the department upon the expiration, revocation, or suspension of the certificate(s);]

[(5) a statement that the applicant understands that the materials submitted become the property of the department and are nonreturnable (unless prior arrangements have been made);]

[(6) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information which is material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted any certificate or the revocation of any certificate issued;]

[(7) a statement that the applicant shall advise the department of the organization's current mailing address within 30 days of any changes of address; and]

[(8) the dated signature of the chief executive officer certifying the truth of the information submitted.]

(c) [(d)] Application approval.

(1) The committee shall review **[may be responsible for reviewing]** applications from sponsoring organizations and recommend **[recommending those to be certified]** to the administrator certification for curricula that meets program requirements.

(2) The administrator shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (d) **[(e)]** of this section.

(d) **[(e)]** Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter; or

(B) has failed or refused to properly complete or submit any application form(s) or has knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant's qualifications for certification.

(2) If the administrator determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the disapproval and of the opportunity for re-application or appeal;

(3) The applicant whose application has been disapproved under paragraph (1) of this subsection shall be permitted to reapply after a period of not less than six months from the date of the disapproval and shall submit a current application satisfactory to the department, in **[of]** compliance with the then current requirements of this chapter and the provisions of the Health and Safety Code, Chapter 48[Act].

(4) An applicant whose application has been disapproved may appeal the disapproval under the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(e) **[(f)]** Application processing. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required.

(1) Letter of acceptance of application for certification – no more than 90 days.

(2) Letter of application deficiency – no more than 90 days.

§146.7. Types of Certificates and Applicant Eligibility.

(a) Purpose. The purpose of this section is to set out the types of certificates issued and the qualifications of applicants.

(1) Upon approval of the application, the department shall issue the promotor(a) or community health worker, instructor or sponsoring organization a certificate with an expiration date and a certificate number. An identification card shall be included for a promotor(a) or community health worker or instructor.

[(1) The Department of State Health Services (department) shall issue promotor(a) or community health worker certificates of competence, instructor certificates, and sponsoring institutions or training program certificates. A certificate will recognize all those who have performed promotor(a) or community health worker services between July 1997 to January 2005 and not less than 1000 cumulative hours between July 1997 to January 2005. A certificate will recognize all those who have successfully completed an entry-level training and certification program.]

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

(4) A promotor(a) or community health worker and instructor shall carry the original identification card. A sponsoring organization [**institution or training program**] shall display the original certificate at the training or educational site. Photocopies shall not be carried or displayed.

(5) - (7) (No change.)

(8) The department shall replace a lost, damaged, or destroyed certificate or identification card upon written request.

(b) Special provisions for persons who have performed promotor(a) or community health worker services in the previous six years starting from the date the application is signed [between July 1997 to January 2005]. Upon submission of the application forms by the practicing promotor(a) or community health worker and upon approval by the department, the department shall issue a certificate of competence to a person who has performed promotor(a) or community health worker services for not less than 1000 cumulative hours in the previous six years starting from the date the application is signed [between July 1997 to January 2005], as documented on form(s) specified [prescribed] by the department.

(c) Special provisions for persons with experience in instructing or training individuals providing promotor(a) or community health work services, including promotores or community health workers and other health care paraprofessionals and professionals. Upon submission of the application forms by the instructor and upon approval by the department, the department shall issue a certificate of competence to a person who has provided instruction or training to individuals providing community health work services for not less than 1000 cumulative hours in the previous six years starting from the date the application is signed.

[(c) Special provisions for persons who are nationally certified health education specialists in good standing, with experience in instructing or training promotores(as) or community health workers for not less than 1000 cumulative hours between July 1997 to January 2005, other licensed/certified healthcare professionals including social workers in good standing as well as other professionals with Masters degrees in public health, community health or related field, or Bachelors degrees in social services or related field who have acted as instructors of promotores(as) or community health workers, for not less than 1000 cumulative hours between July 1997 to January 2005 and for promotores(as) or community health workers who have acted as supervisors or as trainers and have experience in instructing or training promotores(as) or community health workers for not less than 1000 cumulative hours between July 1997 to January 2005. Upon submission of the application forms by an instructor, other licensed/certified healthcare professional or certified health education specialist, or instructor with Masters/Bachelors degree and upon approval by the department, the department shall issue an instructor certificate to a person who is certified by the National Commission for Health Education Credentialing, Inc., or who is a licensed/certified healthcare professional, or instructor with Masters/Bachelors degree and to a promotor(a) or community health worker who meets the above qualifications.]

(d) Minimum eligibility requirements for promotor(a) or community health worker certification. The following requirements apply to all individuals applying for certification **[who do not meet the requirements of subsection (b) of this section]:**

(1) attainment of 18 years of age or an eligible and informed minor as determined by the department **[committee];**

(2) freedom from physical or mental impairment, which in accordance with the Americans with Disabilities Act, interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of the persons being served; and

(3) submission of a satisfactory completed application on a form supplied by the department. **[: and]**

[(4) successful completion of an approved competency-based training program.]

(e) Individuals applying for certification who do not meet the requirements of subsection (b) of this section shall complete a certified competency-based training program by an approved sponsoring organization.

(f) [(e)] Minimum eligibility requirements for instructor certification. The following requirements apply to all individuals applying for certification **[who do not meet the requirements of subsection (c) of this section]:**

[(1) graduation from high school or its equivalent as determined by the sponsoring institution or the training program or six years of continuous service as a promotor(a) or community health worker;]

(1) [(2)] attainment of 18 years of age **[or an eligible and informed minor]** as determined by the department **[committee]**;

[(3) Completion of an instructor/trainer program by an approved sponsoring institution or training program;]

(2) [(4)] freedom from physical or mental impairment, which in accordance with the Americans with Disabilities Act, interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of participants; and

(3) [(5)] submission of a satisfactory completed application on a form supplied by the department.

(g) Individuals applying for certification who do not meet the requirements of subsection (c) of this section shall complete a certified instructor trainer program by an approved sponsoring organization. An individual applying for certification as an instructor may seek certification in one or more of the eight core competencies.

(h) [(f)] Minimum eligibility requirements for certification of a curriculum from a sponsoring organization **[institution or training program certification]**. The following requirements apply to all organizations **[institutions or programs]** applying for certification of a curriculum:

(1) approval and certification **[usage]** of a **[an approved]** curriculum for promotor(a) or community health worker training, instructor certification or **[and/or]** for continuing education of promotores **[promotores(as)]** or community health workers and instructors that meets the standards and guidelines established by the department and as set forth in §146.8 of this title; and

(2) submission of a satisfactory completed application on a form supplied by the department. **[; and]**

[(3) at least two years of experience with training or sponsoring training for promotores(as) or community health workers.]

§146.8. Standards for the Approval of Curricula.

(a) Purpose. The purpose of this section is to establish the minimum standards for approval of curricula and programs to train persons to perform promotor(a) or community health worker services or to act as an instructor **[and to qualify for the certificate of competence]**.

(b) All 160-hour curricula to be used **[and programs developed]** to train individuals to perform promotor(a) or community health worker services or to act as instructors must:

(1) assure that the eight core skill and knowledge competencies, identified in the National Community Health Advisor Study, June 1998 for promotores **[promotores(as)]** or community health workers, including communication, interpersonal, service coordination, capacity-building, advocacy, teaching and organizational skills and knowledge base on specific health issues are addressed. **[Individuals applying for certification as an instructor may seek certification in one or more of the eight core competencies outlined in this subsection;]**

(2) (No change.)

(3) include a method or process to evaluate and document the acquisition of knowledge and mastery of skills by the individual trained **[and the success of the training program according to the performance measures framework established within the National Community Health Advisor Study, June 1998];**

(4) include a method or process for the individual trained to evaluate the training experience using a form supplied by the department;

(5) [(4)] be certified [approved] by the department and [be] offered within the geographic limits of the State of Texas;

[(5) be submitted to the department at least ten weeks prior to the starting date of the program to be offered by a sponsoring institution;]

(6) be submitted to the department along with supporting materials in hard copy and electronic format as specified by the department. Materials shall be organized [a three-ring binder] with all pages clearly legible and consecutively numbered with a table of contents (follow Required Table of Contents on page ii of application form) and divided with tabs identified to correspond to the core competencies, including evaluation materials and other programmatic information and assurances required within this section;

(7) be 50 pages or less, not including application sections I - IV;

(8) [(7)] provide a list of certified instructors, facilities and locations for the training program;

(9) [(8)] provide a calendar of scheduled training events by dates, times and locations;

(10) [(9)] identify the method for recruiting persons to the program;

(11) [(10)] report the names of individuals to the department who have successfully completed the training program within 30 days of program completion on a form supplied by the department;

(12) [(11)] maintain an accurate record of each person's attendance and participation for not less than five years;

[(12) be live and interactive and directed by an approved instructor or delivered by an approved instructor through interactive technology in real time;]

(13) include the participation in the curriculum development of an instructor certified by the department; and

[(13) focus on the eight core roles of the promotor(a) or community health worker as noted in the definition of promotor(a) or community health worker.]

(14) specify the method or methods by which training will be delivered, including classroom instruction and use of distance learning technology with at least 75% of instruction delivered in “real time.”

(c) All continuing education curricula to be used to provide continuing education to certified promotores or community health workers or instructors must:

(1) assure that one or more of the eight core skill and knowledge competencies, identified in the National Community Health Advisor Study, June 1998 for promotores or community health workers, including communication, interpersonal, service coordination, capacity-building, advocacy, teaching and organizational skills and knowledge base are addressed;

(2) include a method or process to evaluate and document the acquisition of knowledge and mastery of skills by the individual trained;

(3) include an evaluation by the individual trained of the training experience on a form supplied by the department;

(4) be certified by the department and offered within the geographic limits of the State of Texas;

(5) be submitted to the department along with supporting materials in hard copy and electronic format as specified by the department. Materials shall be organized with all pages clearly legible and consecutively numbered with a table of contents (follow Required Table of Contents on page ii of application form) and divided with tabs identified to correspond to the core competencies, including evaluation materials and other programmatic information and assurances required within this section;

(6) be 20 pages or less, not including application sections I - IV;

(7) provide a list of certified instructors, facilities and locations for the training program;

(8) provide a calendar of scheduled training events by dates, times and locations;

(9) identify the method for recruiting persons to the program;

(10) report the names of individuals to the department who have successfully completed the training program within 30 days of program completion on a form supplied by the department;

(11) maintain an accurate record of each person's attendance and participation for not less than five years;

(12) include the participation in the curriculum development of an instructor certified by the department; and

(13) specify the method or methods by which training will be delivered, including classroom instruction and use of distance learning technology.

(d) Addenda to existing certified curriculum. A sponsoring organization may submit an addendum when making revisions to a current, certified curriculum. An addendum may be submitted to the department via mail or email and must be in compliance with standards listed above.

§146.9. Certificate Renewal [**Issuance and Renewals**].

(a) Purpose. The purpose of this section is to set out the rules for **[issuing certificates and]** certificate renewal.

[(b) Issuance of certificates.]

[(1) Upon approval of the application, the department shall issue the promotor(a) or community health worker, instructor or sponsoring institution or training program a certificate with an expiration date and a certificate number. An identification card shall be included for the promotor(a) or community health worker and the instructor.]

[(2) The department shall replace a lost, damaged, or destroyed certificate or identification card upon written request.]

(b) ~~[(c)]~~ Certificate renewal. Each promotor(a) or community health worker, instructor and sponsoring organization **[institution or training program]** shall renew the certificate biennially (every two years).

(1) Each promotor(a) or community health worker, instructor and sponsoring organization **[institution]** is responsible for renewing the certificate before the expiration date.

Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal.

(2) Each promotor(a) or community health worker, instructor and sponsoring organization **[institution]** is responsible for completing a renewal application **[form]**.

(3) The department may not renew the certificate of a promotor(a) or community health worker, instructor or sponsoring organization **[institution or training program]** who is in violation of Health and Safety Code, Chapter 48 or this chapter at the time of renewal.

(c) Late renewals.

(1) A person or sponsoring organization whose certificate has expired for not more than one year may renew the certificate by submitting to the department the completed renewal application. Promotors, community health workers and instructors must also submit proof of compliance with continuing education requirements for renewal as set out in this section before the late renewal is effective. A certificate issued under this subsection shall expire two years from the date the previous certificate expired.

(2) A certificate not renewed within one year after expiration cannot be renewed.

(3) A person may not use a title that implies certification while the certificate is expired as set out in §146.12 of this title (relating to Violations, Complaints and Subsequent Actions).

(4) A person or sponsoring institution whose certification has been expired for more than one year may apply for another certificate by meeting the then-current requirements of the Health and Safety Code, Chapter 48 and this chapter which apply to all new applicants.

(d) Expired certificates. The department, by certified mail using the last address known, shall attempt to inform each promotor(a) or community health worker, instructor, or sponsoring organization **[institution or training program]** who has not timely renewed a certificate, after a period of more than ten days after the expiration of the certificate that the certificate has automatically expired. A person or sponsoring organization **[institution or training program]** whose certificate automatically expires is required to surrender the certificate and identification cards to the department.

(e) Right to inspect. The department reserves the right to inspect facilities and documentation and to monitor sponsoring organizations **[institutions, training programs, and instructors]**.

§146.10. Continuing Education Requirements.

(a) Purpose. The purpose of this section is to establish the continuing education requirements which a promotor(a) or community health worker and instructor must complete to maintain certification. **[The requirements are intended to maintain and improve the quality**

of professional services provided by promotores(as) or community health workers and instructors and to keep these individuals knowledgeable of current programs, techniques and practices. Approved sponsoring institutions and/or training programs can offer continuing education opportunities for promotores(as) or community health workers and instructors.]

(b) General. Continuing education requirements for recertification shall be fulfilled during each biennial renewal period. **[A promotor(a) or community health worker must complete 20 contact hours of continuing education acceptable to the department during each biennial renewal period. An instructor must complete at a minimum 20 contact hours of continuing education acceptable to the department during each biennial renewal period.]**

(1) A promotor(a) or community health worker must complete 20 contact hours of continuing education related to the core competencies acceptable to the department during each biennial renewal period.

(A) At least 5 hours shall be satisfied by participation in a department certified training program including a training program sponsored or provided by the department that provides continuing education credits for promotores or community health workers.

(B) Up to 5 hours may be satisfied through continuing education counted toward the renewal of a promotor(a) or community health worker's Texas license /registration, or /certification in another health profession provided the hours meet all the requirements of this section.

(C) Up to 10 hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials, training not certified by the department, or a combination thereof which meet the requirements set out in this section.

[(1) At least 50% of the required number of hours shall be satisfied by attendance and participation in instructor-directed activities through a department certified sponsoring institution/training program.]

(2) An instructor must complete at a minimum 20 contact hours of continuing education related to the core competencies during each biennial renewal period.

(A) At least 5 hours shall be satisfied by participation in a department certified training program including a training program sponsored or provided by the department that provides continuing education credits for promotores or community health workers or instructors.

(B) Up to 5 hours may be satisfied through:

(i) instruction in certified training programs which meet the department's criteria as set out in §146.7 of this title (relating to Types of Certificates and

Applicant Eligibility). One hour of credit shall be given for 2 clock hours actually taught, up to 5 hours. Continuing education credit will only be given once for teaching a particular course; or

(ii) continuing education counted toward the renewal of an instructor's Texas license/registration/certification in another health profession provided the hours meet all the requirements of this section.

(C) Up to 10 hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials, training not certified by the department, or a combination thereof which meet the requirements set out in this section.

[(2) No more than 50% of the required number of hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials, training not certified by the department, or a combination thereof which meet the requirements set out in this section.]

(3) (No change.)

(c) Content. All continuing education activities should provide for the professional growth of the community health worker or promotor(a) and instructor.

(1) At least 50% of the required hours must be skill-based activities which are directly related to promotor(a) or community health worker competencies, including communication skills, interpersonal skills, service coordination skills, capacity-building skills, advocacy skills, teaching skills, and organizational skills.

(2) The remaining 50% can be related to new knowledge base on specific health issues or programmatic activity.

(d) Types of acceptable continuing education. Continuing education shall be acceptable if the experience or activity is at least 30 consecutive minutes in length and is offered by an approved sponsoring organization of a [institution and/or] training program.

(e) Reporting of continuing education. Each promotor(a) or community health worker and instructor is responsible for and shall complete and file with the department at the time of renewal a continuing education report form approved by the department listing the title, date, **[and]** number of hours, and core competency(ies) covered for each activity for which credit is claimed. The sponsoring organization [institution or training program] must provide a list of instructors, promotores [promotores(as)] or community health workers who successfully complete continuing education contact hours within 30 days of the continuing education event on a form supplied by the department.

(f) Failure to complete the required continuing education.

(1) An instructor, promotor(a) or community health worker may request one [a one time only] 120-day extension per certification period if needed in order to complete the continuing education requirement.

(2) (No change.)

(3) An instructor, promotor(a) or community health worker may renew late under §146.9 of this title (relating to Certificate Renewal) after all the continuing education requirements have been met. **[take the required training again to become an instructor, promotor(a) or community health worker if deadlines for renewal were not met.]**

Legend: (Proposed New Rules)

Regular Print = Proposed New Language

§146.11. Professional and Ethical Standards. The purpose of this section shall be to establish the standards of professional and ethical conduct required of an instructor, training program, promotor(a) or community health worker pursuant to the Health and Safety Code, Chapter 48.

(1) Professional representation and responsibilities.

(A) An instructor, promotor(a) or community health worker shall not misrepresent any professional qualifications or credentials or provide any information that is false, deceptive, or misleading to the department, for employment or work assignment as an instructor, promotor(a) or community health worker, or fail to disclose any information that could affect the decision to employ or assign a task as an instructor, promotor(a) or community health worker.

(B) An instructor, promotor(a) or community health worker shall maintain knowledge and skills for continuing professional competence. An instructor, promotor(a) or community health worker shall participate in continuing education programs and activities as set out in §146.10 of this title (relating to Continuing Education Requirements).

(C) An instructor, promotor(a) or community health worker shall be responsible for competent and efficient performance of his assigned duties and shall report to the department incompetence and illegal or unethical conduct of members of the profession.

(D) An instructor, promotor(a) or community health worker shall not retaliate against any person who reported in good faith to the department alleged incompetence; illegal, unethical, or negligent conduct of any instructor, promotor(a) or community health worker; or alleged misrepresentation or any violation(s) of the Health and Safety Code, Chapter 48, or this chapter.

(E) An instructor, promotor(a) or community health worker shall keep his or her file updated by notifying the department of changes in preferred mailing address and telephone number.

(F) An instructor, promotor(a) or community health worker shall not engage in conduct that is prohibited by state, federal, or local law, including those laws prohibiting the use, possession, or distribution of drugs or alcohol.

(G) An instructor, promotor(a) or community health worker shall not discriminate on the basis of race, creed, gender, sexual orientation, religion, national origin, age, physical disability or economic status in the performance of community health work services or training.

(H) A sponsoring organization shall not make any misleading, deceptive, or false representations in connection with offering or obtaining approval of a certified curriculum.

(I) A sponsoring organization of a certified curriculum shall not discriminate in decisions regarding student recruitment, selection of applicants, student training or instruction on the basis of race, creed, gender, sexual orientation, age, physical disability, economic status, religion or national origin.

(2) Relationships with patients/clients.

(A) An instructor, promotor(a) or community health worker shall not accept gratuities for preferential consideration of the patient/client. The instructor, promotor(a) or community health worker shall guard against conflicts of interest.

(B) An instructor, promotor(a) or community health worker shall not violate any provision of any federal or state statute relating to confidentiality of patient/client communication and/or records.

§146.12. Violations, Complaints and Subsequent Actions.

(a) General. This section establishes standards relating to:

(1) offenses or criminal convictions;

(2) violations which result in disciplinary actions;

(3) procedures for filing complaints alleging violations and prohibited actions under the Health and Safety Code, Chapter 48 or this chapter; and

(4) the department's investigation of complaints.

(b) Criminal convictions which directly relate to the profession as an instructor, promotor(a) or community health worker.

(1) The department may suspend or revoke any existing certificate, or disqualify a person from receiving any certificate because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of an instructor, promotor(a) or community health worker.

(2) In considering whether a criminal conviction directly relates to the occupation of an instructor, promotor(a) or community health worker, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for certification as an instructor, promotor(a) or community health worker. The following felonies and misdemeanors relate to any certificate of an instructor, promotor(a) or community health worker because these criminal offenses indicate an inability or a tendency to be unable to perform as an instructor, promotor(a) or community health worker:

(i) any misdemeanor and/or felony offense involving moral turpitude by statute or common law; and

(ii) a misdemeanor or felony offense under various titles of the Texas Penal Code:

(I) offenses against the person (Title 5);

(II) offenses against property (Title 7);

(III) offenses against public order and decency (Title 9);

(IV) offenses against public health, safety, and morals (Title 10); and

(V) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4);

(C) the extent to which any certificate might offer an opportunity to engage in further criminal history activity of the same type as that in which the person previously has been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of an instructor, promotor(a) or community health worker. In making this determination, the department will apply the criteria outlined in Texas Occupations Code, Chapter 53, the legal authority for the provisions of this section.

(3) The misdemeanors and felonies listed in paragraph (2)(B)(i) - (ii) of this subsection are not inclusive in that the department may consider other particular crimes in special cases in order to promote the intent of the Health and Safety Code, Chapter 48 and this chapter.

(c) Types of violations:

(1) a person intentionally or knowingly represents oneself as an instructor, promotor(a) or community health worker without a certificate issued under the Health and Safety Code, Chapter 48;

(2) a person obtains or attempts to obtain a certificate issued under the Health and Safety Code, Chapter 48, by bribery or fraud;

(3) a person engages in unprofessional conduct, including the violation of the standards of practice for instructors, promotores or community health workers as established by the department;

(4) a person fails to report to the department the violation of the Health and Safety Code, Chapter 48 or any allegations of sexual misconduct by another person;

(5) a person violates a provision of the Health and Safety Code, Chapter 48 or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department; or

(6) a person has a certificate revoked, suspended or otherwise subjected to adverse action or being denied a certificate by another certification authority in another state, territory or country.

(d) Procedures for revoking, suspending, or denying a certificate to persons with criminal backgrounds.

(1) The department shall give written notice to the person that the department intends to deny, suspend, or revoke the certificate after hearing in accordance with the provisions of Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(2) If the department denies, suspends, or revokes a certificate under these sections after hearing, the department shall give the person written notice of the reasons for the decision.

(e) Filing of complaints.

(1) Anyone may complain to the department alleging that a person has committed an offense or action prohibited under the Health and Safety Code, Chapter 48, or that a certificate holder has violated the Health and Safety Code, Chapter 48 or this chapter.

(2) A person wishing to complain about an offense, prohibited action, or alleged violation against an instructor, promotor(a) or community health worker or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the department. The department's mailing address is Office of Title V and Family Health, Promotor(a)/Community Health Worker Training and Certification Program, Mail Code 1922, P. O. Box 149347, Austin, TX 78714-9347, physical address is 1100 West 49th Street, Austin, Texas 78756-3183, and telephone (512) 458-7111, extension 3500.

(3) Upon receipt of a complaint the department or the department's designee shall send an acknowledgment letter to the complainant and the department's complaint form which the complainant must complete and return to the department or the department's designee before action can be taken. If the complaint is made by a visit to the department, the form may be given to the complainant at that time; however, it must be completed and returned to the department or the department's designee before further action may be taken. Copies of the complaint form may be obtained from the department.

(4) Anonymous complaints shall be investigated by the department, provided sufficient information is submitted.

(f) Investigation of complaints. The department is responsible for investigating complaints.

(g) The department's action.

(1) The department shall take one or more actions described in this section.

(2) The department may determine that an allegation is groundless and dismiss the complaint.

(3) The department may determine that an instructor, promotor(a) or community health worker has violated the Health and Safety Code, Chapter 48 or this chapter and may institute disciplinary action in accordance with subsection (h) of this section.

(4) Whenever the department dismisses a complaint or closes a complaint file, the department shall give a summary report of the final action to the advisory committee, the complainant, and the accused party.

(h) Disciplinary actions. The department may take action under this section as follows.

(1) The department may reprimand an instructor, promotor(a) or community health worker or initiate action to deny, suspend, not renew, or revoke a certificate.

(2) The department may take disciplinary action if it determines that a person who holds a certificate is in violation of §146.11 of this title (relating to Professional and Ethical Standards).

(3) The department shall take into consideration the following factors in determining the appropriate action to be imposed in each case:

(A) the severity of the offense;

(B) the danger to the public;

(C) the number of repetitions of offenses;

(D) the length of time since the date of the violation;

(E) the number and type of previous disciplinary cases filed against the instructor, promotor(a) or community health worker;

(F) the length of time the instructor, promotor(a) or community health worker has performed community health work services or training;

(G) the actual damage, physical or otherwise, to the patient, if applicable;

(H) the deterrent effect of the penalty imposed;

(I) the effect of the penalty upon the livelihood of the instructor, promotor(a) or community health worker;

(J) any efforts for rehabilitation; and

(K) any other mitigating or aggravating circumstances.

(4) The department may take action for violation of the Health and Safety Code, Chapter 48 or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department.

(i) Fair hearing.

(1) The fair hearing shall be conducted according to the Chapter 1, Subchapter C of this title.

(2) Prior to making a final decision adverse to a certificate holder, the department shall give the certificate holder written notice of an opportunity for a hearing on the proposed action.

(3) The certificate holder has 20 days after receiving the notice to request a hearing on the proposed action. A request for a hearing shall be made in writing and mailed or hand-delivered to the department, unless the notice letter specifies an alternative method. If a person who is offered the opportunity for a hearing does not request a hearing within the prescribed time for making such a request, the person is deemed to have waived the hearing and the action may be taken.

(j) Final action.

(1) If the department suspends a certificate, the suspension remains in effect until the department determines that the reasons for suspension no longer exist. The instructor, promotor(a) or community health worker whose certificate has been suspended is responsible for

securing and providing to the department such evidence, as may be required by the department that the reasons for the suspension no longer exist. The department shall investigate prior to making a determination.

(2) During the time of suspension, the former certificate holder shall return the certificate and identification card(s) to the department.

(3) If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in these sections; however, the department may not renew the certificate until the department determines that the reasons for suspension have been removed.

(4) A person whose application is denied or certificate is revoked as a result of disciplinary action is ineligible for a certificate under Health and Safety Code, Chapter 48, for one year from the date of the denial or revocation or surrender.

(5) Upon revocation or nonrenewal, the former certificate holder shall return the certificate and any identification card(s) to the department.

Proposed repealed text
~~Strikethrough~~=repealed text

~~§146.5. Application Requirements and Procedures for Instructors.~~

~~(a) Purpose. The purpose of this section is to set out the application procedure for certification of instructors.~~

~~(b) Instructor certificate.~~

~~(1) Unless otherwise indicated, an applicant must complete all required information and documentation of credentials on official department forms and submit the required information and documentation electronically or in hard copy to the department.~~

~~(2) The department shall send a notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.~~

~~(c) Required application materials. The application form shall contain the following items:~~

~~(1) specific personal data, birth date, current and previous places of employment, other state licenses and certificates held, and educational and training background;~~

~~(2) a statement that the applicant understands the Health and Safety Code, Chapter 48 and this chapter and agrees to abide by them;~~

~~(3) the applicant's permission to the department to seek any information or references which are material in determining the applicant's qualifications;~~

~~(4) a statement that the applicant, if issued a certificate, shall return the certificate and identification card(s) to the department upon the expiration, revocation, or suspension of the certificate;~~

~~(5) a statement that the applicant understands that the materials submitted become the property of the department and are nonreturnable (unless prior arrangements have been made);~~

~~(6) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information which is material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted any certificate or the revocation of any certificate issued;~~

~~(7) a statement that the applicant shall advise the department of his or her current mailing address within 30 days of any changes of address;~~

~~(8) the dated signature of the applicant certifying the truth of the information submitted; and~~

~~(9) the signature of the executive officer of a sponsoring institution or training program which attests to the competence of the instructor.~~

~~(d) Application approval.~~

~~(1) The committee may be responsible for reviewing applications and recommending those to be certified by the administrator.~~

~~(2) The administrator shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (e) of this section.~~

~~(e) Disapproved applications.~~

~~(1) The department may disapprove the application if the applicant:~~

~~(A) has not met the eligibility and application requirements set out in this chapter;~~

~~(B) does not have the appropriate training or experience to qualify as an instructor;~~

~~(C) has failed or refused to properly complete or submit any application form(s) or has knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant's qualifications for certification;~~

~~(D) has engaged in unprofessional conduct; or~~

~~(E) has developed an incapacity, and in accordance with the Americans with Disabilities Act, that prevents the instructor from practicing with reasonable skill, competence, and safety to the public as the result of:~~

~~(i) illness;~~

~~(ii) drug or alcohol dependency; or~~

~~(iii) another physical or mental condition or illness;~~

~~(2) If the administrator determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the disapproval and of the opportunity for re-application;~~

~~(3) The applicant whose application has been disapproved under paragraph (1) of this subsection shall be permitted to reapply after a period of not less than six months from the date of the disapproval and shall submit a current application satisfactory to the department, of compliance with the then current requirements of this chapter and the provisions of the Health and Safety Code, Chapter 48.~~

~~(4) An applicant whose application has been disapproved may appeal the disapproval under the fair hearing procedures found in Chapter 1, Subchapter C of this title.~~

~~(f) Application processing. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required.~~

~~(1) Letter of acceptance of application for certification—90 days.~~

~~(2) Letter of application deficiency—90 days.~~