

**Department of State Health Services
Agenda Item for State Health Services Council
May 12, 2006**

Agenda Item Title: New rules relating to the regulation and licensing of personal emergency response system (PERS) providers

Agenda Number: 5d

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: Senate Bill 568 (79th Regular Session of the Texas Legislature, 2005) created new Health and Safety Code, Chapter 781, to exclusively focus on the licensing and regulation of PERS providers, formerly regulated by the Department of State Health Services along with related businesses regulated by the Department of Public Safety under Occupations Code, Chapter 1702.

Summary: These rules provide for the implementation and administration of the regulatory program for PERS providers established under Health and Safety Code, Chapter 781, and its predecessor law. A “personal emergency response system” is one that is “installed in the residence of a person; monitored by an alarm company; designed only to permit the person to signal the occurrence of a medical or personal emergency on the part of the person so that the provider may dispatch the appropriate aid; and is not part of a combination of alarm systems that includes a burglar alarm or fire alarm.”

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

Stakeholder input has been solicited through verbal and written communication with stakeholders and through the PERS program web site. Staff worked closely with the Texas Independent Medical Alert Association and its predecessor organization, Texas Association of PERS Providers, in rule development. Staff mailed draft rules to all licensees in October 2005 and solicited input. Another rules mailout will be done after proposed rules are published.

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

Agenda Item Approved by: _____

Presented by: Richard R. Rees

Title: PERS Program Specialist

Program/Division: PERS Licensing Program/Professional Licensing and Certification

Unit/Division for Regulatory Services

Contact Name/Phone: Richard R. Rees 834-4565 and Debbie Peterson 834-6628

Date Submitted

February 27,
2006

Title 25. HEALTH SERVICES

Part 1. DEPARTMENT OF STATE HEALTH SERVICES

Chapter 140. Health Professions Regulation.

Subchapter B. Personal Emergency Response System Providers.

New §§140.30 - 140.47

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§140.30 - 140.47, concerning the regulation and licensing of personal emergency response system (PERS) providers.

BACKGROUND AND PURPOSE

The passage of Senate Bill 568 in the 79th Regular Session of the Texas Legislature, 2005, created new Health and Safety Code, Chapter 781, exclusively focusing on the licensing and regulation of personal emergency response system (PERS) providers. It is the purpose of these rules to implement and administer Health and Safety Code, Chapter 781.

A “personal emergency response system” is one that is “installed in the residence of a person; monitored by an alarm company; designed only to permit the person to signal the occurrence of a medical or personal emergency on the part of the person so that the provider may dispatch the appropriate aid; and is not part of a combination of alarm systems that includes a burglar alarm or fire alarm.”

SECTION BY SECTION SUMMARY

Section 140.30 introduces the content and purpose of the chapter. Section 140.31 provides definitions of terms used throughout the chapter. Section 140.32 provides a schedule of fees for program. Section 140.33 provides a method for the public to request that rules be adopted or amended. Section 140.34 sets out standard department requirements for the initial license and registration application process. Section 140.35 establishes general liability insurance requirements for licensees. Section 140.36 references the across-the-board application processing timeframes and procedures established for professional licensing staff. Section 140.37 defines who is required to hold a license and a registration. Section 140.38 sets out specific procedures for renewing licenses and registrations; and addresses across-the-board legislative requirements concerning active military duty, student loan default, and child support/custody. Section 140.39 clearly assigns responsibility for address change notifications to the licensee/registrant.

Section 140.40 establishes standards of ethical conduct for PERS licensees and registrants, and addresses the relationship between the department and PERS providers. Section 140.41 addresses department policy to provide information regarding regulatory functions and complaint procedures to the public and other agencies. Section 140.42 details the complaint process and complaint investigation. Section 140.43 defines grounds for disciplinary action to be taken against licensees and registrants. Section 140.44 addresses informal conferences. Section 140.45 addresses formal hearings. Section 140.46 sets out guidelines for the licensing and registration of persons with criminal convictions. Section 140.47 addresses license suspension for failure to maintain insurance coverage.

FISCAL NOTE

Kathryn Perkins, Director, Health Care Quality Section, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue to the state of \$32,462 the first fiscal year

and \$32,462 each year for fiscal years two through five. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed, if those businesses engage in the provision of PERS services as defined by the Health and Safety Code, Chapter 781. The anticipated cost of licensing fees for each business will vary depending upon the number of employees and branch offices that a business has. The anticipated cost for small businesses will be the same as those of larger businesses. There will be economic cost to individuals who are required to comply with the sections as proposed, if the individuals work for a business entity that does not cover the cost of registration for its employees. The cost will be \$125 every two years for each category of registration held by the individual. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to protect and promote public health, safety, and welfare, by regulating personal emergency response systems services.

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 new rules 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 on the proposal may be submitted to Richard R. Rees, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-4565 or by email to pers@dshs.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed new rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed new sections are authorized by Health and Safety Code, §781.051(b), which requires the Executive

Commissioner to adopt rules necessary to administer the chapter and by Health and Safety Code, §781.051(c), which requires the Executive Commissioner to establish fees necessary to administer the chapter, including fees for processing and issuing or renewing a license or registration under the chapter; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new rules affect Health and Safety Code, Chapters 781 and 1001; and Government Code, Chapter 531.

Legend: (Proposed New Rules)
Regular Print = Proposed new language

§140.30. Introduction.

(a) This chapter implements the applicable provisions of Health and Safety Code, Chapter 781, concerning the regulation and licensing of personal emergency response system (PERS) providers.

(b) These sections cover definitions; fees; petition for rulemaking; application requirements and procedures; requirement for insurance; application processing; categories of licensure and registration; renewal of license or registration; responsibilities and procedures for changes of name or address; standards of conduct for PERS providers; consumer information concerning the department's regulatory functions and procedures for filing complaints; complaint investigations; grounds for disciplinary action; informal disposition; formal hearings; guidelines for issuing licenses and registrations to persons with criminal convictions; and immediate suspension for failure to maintain insurance coverage.

§140.31. Definitions.

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

(1) Act--Texas Health and Safety Code, Chapter 781.

(2) Administrator--The department employee designated as the administrator of the regulatory activities authorized by the Act.

(3) Applicant--A person or entity who applies for a license or registration to provide personal emergency response system services under the Act.

(4) Branch office license--A place of business, other than the principal place of business as shown in department records, from which business is conducted, solicited, or advertised.

(5) Business entity--A business operating under any legal business structure.

(6) Client--A person who has entered into a contract to receive personal emergency response system services in return for financial or other considerations.

(7) Commissioner--The Commissioner of the Department of State Health Services.

(8) Contract--An agreement between a person or company regulated under this chapter and a client. Such contracts may be oral or written, or in any combination thereof.

(9) Department--The Department of State Health Services.

(10) Personal emergency response system--An alarm system that is installed in the residence of a person; monitored by an alarm systems company; designed only to permit the person to signal the occurrence of a medical or personal emergency on the part of the person so that the company may dispatch appropriate aid; and not part of a combination of alarm systems that includes a burglar alarm or fire alarm.

(11) PERS--Personal emergency response system.

(12) License--A license issued under the Act authorizing a person to provide personal emergency response system services.

(13) Licensee--A person that has been granted a license to provide personal emergency response system services in accordance with the Act.

(14) Registrant--A person that has been granted a registration to provide personal emergency response system services in accordance with the Act.

(15) Registration--A registration issued under the Act authorizing a person to provide personal emergency response system services.

(16) Shareholder--Any individual holding stock in a licensee who is actively involved in the normal course of operation and business of the licensee and shall not include those individuals who only hold stock in the licensee solely for the purposes of investment.

(17) Security salesperson--Any individual who is employed by a security services contractor to sell services offered by the contractor, and enters a client's residence at any time during the person's employment.

(18) Advertising--The direct solicitation for business which requires a license or registration to provide personal emergency response system services and involving more than a mere listing of a licensee's name, address, and telephone number.

§140.32. Fees.

(a) The fees are as follows:

(1) application and initial license to provide personal emergency response system services--\$800;

(2) application for branch office license--\$800;

(3) application and initial registration as an installer, manager, branch office manager, or salesperson of a personal emergency response system--\$125;

(4) initial registration as an owner, officer, partner, or shareholder of a personal emergency response system services company--\$125;

(5) renewal of a license or a branch office license to provide personal emergency response system services--\$800;

(6) renewal of a registration as an installer, manager, branch office manager, or salesperson of a personal emergency response system--\$125;

(7) renewal of a registration as an owner, officer, partner, or shareholder of a personal emergency response system services company--\$125; and

(8) duplicate license, registration, or identification card--\$20.

(b) For all application and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(c) Fees shall be made payable to the Department of State Health Services and may be in the form of a personal check, money order, or cashier's check.

(d) Fees submitted to the department are not refundable.

§140.33. Petition for Rulemaking.

Procedures for the submission, consideration, and disposition of a petition to adopt a rule are set out in 15 Texas Administrative Code, §351.2 (relating to Petition for the Adoption of a Rule).

§140.34. Application Requirements and Procedures.

(a) An applicant for a license or a registration must submit all required information on official application forms prescribed by the department and submit the required application fee and the initial license or registration fee.

(b) The application form shall contain the following information:

(1) specific information regarding personal data; full legal name of individual or business entity; date of birth; social security number; taxpayer identification number; information regarding other licenses, registrations, permits, and certifications held by applicant; and information regarding misdemeanor and felony convictions of the applicant;

(2) trade names and addresses of all locations and branch offices at which the applicant intends to conduct business;

(3) if the applicant is a corporation or other business entity, specific information regarding type of ownership, registered address, and names and addresses of all officers, directors, registered agents and major shareholders;

(4) if the applicant is a corporation, a current Certificate of Existence or Certificate of Authority issued by the Texas Secretary of State and a current letter from the Texas Comptroller of Public Accounts verifying that the corporation is current in the payment of franchise taxes;

(5) a statement that the applicant has read the Act and these rules;

(6) a statement that the applicant, if issued a license or registration, shall return the license or registration to the department upon revocation or suspension of the license or registration or upon lawful demand;

(7) a statement that the applicant understands that fees and materials submitted in the application process are nonrefundable and nonreturnable;

(8) a statement that the applicant agrees to comply with all state and federal laws and regulations regarding the sale and delivery of personal emergency response system services;

(9) a statement that the applicant meets the qualifications prescribed by the Act for a license or registration;

(10) a statement that the information contained in the application is truthful and complete;

(11) if the applicant is a corporation or other business entity, evidence of a general liability insurance policy on a certificate of insurance form prescribed by the department and countersigned by an insurance agent

licensed in this state or a certificate of insurance for surplus lines coverage obtained under Insurance Code, Article 1.14-2, through a licensed Texas surplus lines agent resident in this state;

(12) if the applicant is a corporation or other business entity, a statement regarding the method by which monitoring services will be provided; and

(13) the signature of the applicant.

§140.35. Requirement for Insurance.

(a) As required by the Act, the department may not issue a license unless the applicant files with the department:

(1) evidence of a general liability insurance policy on a certificate of insurance form prescribed by the Texas Department of Insurance and countersigned by an insurance agent licensed in this state; or

(2) a certificate of insurance for surplus lines coverage obtained under Insurance Code, Chapter 981, through a licensed Texas surplus lines agent resident in this state.

(b) The general liability insurance policy must be conditioned to pay on behalf of the license holder damages that the license holder becomes legally obligated to pay because of bodily injury, property damage, or personal injury, caused by an event involving the principal, or an officer, agent, or employee of the principal, in the conduct of any business licensed under this chapter.

(c) The insurance policy must contain minimum limits of:

(1) \$100,000 for each occurrence for bodily injury and property damage;

(2) \$50,000 for each occurrence for personal injury; and

(3) a total aggregate amount of \$200,000 for all occurrences.

(d) An insurance certificate executed and filed with the department under this chapter remains in effect until the insurer terminates future liability by providing to the department at least 10 days notice of the intent to terminate liability.

§140.36. Application Processing.

The department shall comply with the following procedures in processing applications for licenses and registrations and applications for license and registration renewal.

(1) 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. The license or registration may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) letter of acceptance of application for a license or registration--30 working days;

(B) issuance of license or registration renewal after receipt of documentation of all renewal requirements--20 working days; and

(C) letter of denial of license or registration--30 working days.

(2) In the event an application is not processed in the time periods stated in paragraph (1) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the administrator. If the administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request for reimbursement will be denied.

(3) Good cause for exceeding the time period is considered to exist if the number of applications for licenses, registrations, and renewals exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(4) If a request for reimbursement under paragraph (2) of this section is denied by the administrator, the applicant may appeal to the commissioner for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The program administrator shall provide written notice of the commissioner's decision to the applicant. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(5) Contested cases. The time periods for contested cases related to the denial of licenses, registrations, or renewals are not included within the time periods stated in paragraph (1) of this section. The time period for conducting a contested case hearing starts from the date the department receives a written request for a hearing and ends when the decision of the department is final and can be appealed. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§140.37. Categories of Licensure and Registration.

(a) A person acts as a personal emergency response system provider if the person sells, installs, services, monitors, or responds to only personal emergency response devices or systems. Unless a person holds a license as a PERS provider or is exempt under the Act, a person may not act as a PERS provider, offer to perform PERS services, or engage in business activity for which a license to provide PERS services is required.

(b) The following individuals engaged in providing PERS services for a licensee must hold a valid registration issued by the department:

(1) an alarm systems installer who installs, maintains, or repairs only personal emergency response systems;

(2) a manager or branch office manager;

(3) a security salesperson who is employed by a licensee to sell services offered by the licensee and enters a client's residence at any time during employment; and/or

(4) an owner, officer, partner, or shareholder who is responsible for managing the business of a licensee.

§140.38. Renewal of License or Registration.

- (a) The purpose of this section is to set out the rules governing license or registration renewal.
- (b) When issued, a license is valid for two years, as determined by the department, commencing on the date of issuance of the initial license. All registrations associated with the license shall expire on the same date as the license.
- (c) A licensee or registrant must renew the license or registration biennially. The renewal date of a license shall be the last day of the month in which the license was originally issued.
- (d) At least 30 days prior to the expiration date of a license or registration, the department shall send a notice of renewal to the licensee's or registrant's address in the department's records. The notice shall inform the licensee or registrant of the impending expiration and of the procedures for renewal.
- (e) The renewal process shall require the applicant to provide the preferred mailing address and the disclosure of misdemeanor or felony convictions. If the applicant is a corporation or other business entity, evidence of a general liability insurance policy on a certificate of insurance form prescribed by the department and countersigned by an insurance agent licensed in this state or a certificate of insurance for surplus lines coverage obtained under Insurance Code, Article 1.14-2, through a licensed Texas surplus lines agent resident in this state, must also be submitted.
- (f) A licensee or registrant has applied for renewal of the license or registration when the licensee or registrant has mailed the fully completed renewal form, the required renewal fee, and the certificate of insurance (if required) to the department prior to the expiration date of the license or registration. The postmark date shall be considered the date of mailing. If renewing electronically, the licensee or registrant has applied for renewal of the license or registration upon successful completion of the online renewal process.
- (g) After review of the renewal application, the department shall issue a renewed license or registration to a licensee or registrant who has met all requirements for renewal.
- (h) Each licensee or registrant is responsible for renewing the license or registration before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification from the department prior to the expiration date of the license or registration shall not excuse failure to file for timely renewal.
- (i) A licensee or registrant whose license or registration has expired may not provide, sell, or install personal emergency response system services in this state.
- (j) A person whose license or registration has been expired for 90 days or less may renew the license or registration by paying to the department a renewal fee that is equal to one and one-half times the normally required renewal fee.
- (k) A person whose license or registration has been expired for more than 90 days but less than one year may renew the license or registration by paying to the department a renewal fee that is equal to two times the normally required renewal fee.
- (l) A person whose license or registration has been expired for one year or more may not renew the license or registration. The person may obtain a new license or registration by complying with the requirements and procedures for an original license or registration.
- (m) A licensee or registrant whose check for a licensing or registration fee is not honored by their financial institution shall remit to the department a money order or cashier's check within 30 days of the date of the licensee's or registrant's permit holder's receipt of the department's notice. If proper payment is not received, the license or registration shall not be renewed. If a renewed license or registration has already been issued, it shall be ineffective.

(n) If a licensee or registrant fails to timely renew his or her license or registration because the licensee or registrant is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the licensee or registrant may renew the license or registration pursuant to this subsection.

(1) Renewal of the license or registration may be requested by the licensee or registrant, the licensee's or registrant's spouse, or an individual having power of attorney from the licensee or registrant. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the license or registration. Licensees or registrants who renew in accordance with this subsection shall be excused from paying late fees and penalties.

(3) A copy of the official orders or other official military documentation showing that the licensee or registrant is or was on active duty serving outside the State of Texas shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the licensee or registrant shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(o) The department shall not renew a license or registration if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License).

(p) The department shall not renew a license or registration if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License), for failure to pay child support or failure to comply with a court order providing for the possession of or access to a child.

§140.39. Changes of Name or Address.

(a) The purpose of this section is to set out the responsibilities and procedures for name and address changes by a licensee or registrant.

(b) The registrant shall notify the department of changes in name or preferred mailing address within 30 days of such change(s).

(c) Notification of changes shall be made in writing or by telephone and shall include the former and present name, registration number, former and present mailing address, and a copy of the legal name change document, marriage license, or divorce decree, if applicable.

(d) Before a replacement registration will be issued by the department, the registrant shall return any previously issued document(s).

(e) It is the responsibility of the registrant to comply with the provisions of this section. Notice of complaints, violations, disciplinary action, or other correspondence sent to the address in the department's records are deemed received by the registrant.

(f) A licensee that is a corporation or other business entity shall report changes of name or address to the department in advance of the effective date of the change and shall submit documentation of the change as directed by the department.

(g) A license issued to a corporation or other business entity is not transferable in the event of change of ownership of the corporation or business entity. The new owner shall comply with all application requirements and procedures for obtaining an original license.

(h) A new license or registration certificate and identification card shall not be issued until the licensee or registrant has submitted the duplicate license fee as set out in §140.32(a)(8) of this title (relating to Fees).

§140.40. Standards of Conduct for PERS Providers.

(a) An advertisement by a licensee or registrant soliciting or advertising business must contain the name and address of the licensee or registrant as shown in the department's records.

(b) A licensee shall require each of its employees or other persons who monitor or respond to personal emergency response devices or systems to complete a structured, on-the-job training program.

(1) A licensee shall include content in the training program that is customized and specific to the services provided by the licensee and to the licensee's consumers.

(2) A licensee shall, upon request by the department, provide documentation regarding the content of the training program and verifying that the training program has been successfully completed by all required personnel.

(c) A licensee is responsible for the conduct in the licensee's business of each employee of the licensee while the employee is performing assigned duties for the licensee.

(d) A licensee shall verify and maintain records on all employees, including the information required by the Act, §781.155 (relating to Application for Registration); and shall provide evidence of verification to the department upon request.

(e) A licensee shall at all times post the license in a conspicuous place in the principal place of the licensee's business and each branch office license in a conspicuous place in each branch office of the licensee.

(f) A licensee shall notify the department in writing not later than the 14th day after the date of:

(1) a change of address for the licensee's principal place of business;

(2) a change of a name under which the licensee does business; or

(3) a change in the licensee's officers or partners.

(g) A licensee shall notify the department in writing not later than the 14th day after the date a branch office is established, is closed, or changes address or location.

(h) A licensee shall provide PERS services pursuant to a written contract or agreement signed by the licensee and the client or the client's authorized representative. A licensee shall provide a copy of the contract or agreement to the client or the department upon request. The contract or agreement shall include, but not be limited to, a description of the PERS services and products to be provided and the fees for services and arrangements for payment. A licensee shall inform the client in writing of any changes to the contract or agreement and shall secure the client's or the client's authorized representative's signature verifying agreement with the changes.

(i) An advertisement or announcement used by a licensee or registrant relating to the provision of PERS services shall not contain information which is false, misleading, inaccurate, incomplete, out of context, deceptive, or

not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements.

(j) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes, but is not limited to, advertising that:

(1) makes any material misrepresentation of facts or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes any representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a licensee's services with another licensee's services unless the comparison can be factually substantiated;

(4) causes confusion or misunderstanding as to the credentials, education, or licensure of a licensee;

(5) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of consumer; or

(6) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(k) A licensee or registrant who retains or hires others to advertise or promote the licensee's business remains responsible for the statements and representations made.

(l) Licensees and registrants are bound by the provisions of the Act and this chapter.

(m) A licensee or registrant shall cooperate with the department by furnishing documents or information and by responding to a request for information from the department.

(n) A licensee or registrant shall comply with the terms of any order issued by the department relating to the licensee or registrant.

(o) A licensee or registrant shall not interfere with a department investigation by the willful misrepresentation of facts to the department or by the use of threats or harassment against any person.

(p) A licensee or registrant shall take reasonable action to inform medical or law enforcement personnel if the licensee or registrant determines that there is a definite probability of imminent physical injury to a client or determines that an emergency situation exists.

(q) For each client, a licensee or registrant shall maintain complete and accurate records including, but not limited to, the dates of services, the activation of and response to a client's alarm device, a detailed history of client calls and responses, and billing information.

(r) A licensee or registrant shall maintain records for as long as the client is receiving PERS services, and for five years after the termination of services.

(s) A licensee or registrant shall not engage in habitual drunkenness or be addicted to or dependent upon narcotics or illegal substances.

(t) A licensee or registrant shall not engage in sexual contact or sexual exploitation with a client.

(u) Sexual contact means the activities and behaviors described by Texas Penal Code, §21.01; or requests by a licensee or registrant for conduct described by Texas Penal Code, §21.01.

(v) Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, which can reasonably be construed as being for the purposes of sexual arousal or sexual gratification or sexual abuse of any person.

§140.41. Consumer Information.

(a) The department shall prepare information of interest to consumers or recipients of PERS services describing the department's regulatory functions and the procedures by which complaints are filed with and resolved by the department.

(b) The department shall make the information available to the public and appropriate state agencies.

§140.42. Filing Complaints and Complaint Investigations.

(a) Complaints alleging that a person has violated the Act or this chapter may be filed with the department on a department complaint form or in writing by regular mail, facsimile, or electronic mail. The department may initiate a complaint based on a telephone call if there is a sufficient basis to proceed.

(b) Upon receipt of a written complaint, the department shall send the complainant an acknowledgment letter. The department shall periodically notify the complainant and the respondent of the status of the complaint until its final disposition.

(c) Anonymous complaints may be investigated by the department if there is a sufficient basis and documentation to proceed.

(d) The department shall investigate the complaint and may recommend that the license or registration be revoked, suspended, placed on probation, or that other appropriate action as authorized by law be taken.

(e) If department staff determine that the complaint is not within the department's jurisdiction, the complainant will be notified. The complaint may be referred to another governmental agency for review.

(f) If department staff determine that there are insufficient grounds to support the complaint, the complaint shall be dismissed. Written notice of the dismissal will be provided to the licensee or registrant or person against whom the complaint has been filed and the complainant.

§140.43. Grounds for Disciplinary Action.

(a) The department may deny a license or registration application or renewal application; suspend or revoke a license or registration; place a licensee or registrant on probation; or issue a reprimand for a violation of the Act or this chapter.

(b) The department may also impose an administrative penalty for a violation of the Act or this chapter. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation.

(c) Prior to institution of formal proceedings to deny an application, revoke or suspend, place on probation, issue a reprimand, or impose an administrative penalty, the department shall give written notice to the licensee or registrant by certified mail, return receipt requested, of the facts or conduct alleged to warrant the proposed action,

and the licensee or registrant shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(d) If disciplinary action of a licensee or registrant is proposed, the department shall give written notice by certified mail, return receipt requested, that the licensee or registrant must request, in writing, a formal hearing within 10 days of receipt of the notice, or the right to a hearing shall be waived and the action shall be taken.

(e) The department may request the Attorney General to bring an action for an injunction to prohibit a person from violating the Act or this chapter.

(f) The department may not deny a license or registration application or suspend, revoke, or probate a license or registration or impose administrative penalties against a licensee or registrant based on the refusal of the licensee or registrant to:

(1) submit to a genetic test; or

(2) reveal:

(A) whether the applicant, licensee, or registrant has submitted to a genetic test; or

(B) the results of any genetic test to which the applicant, licensee, or registrant has submitted.

§140.44. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a licensee or registrant or an applicant for a license or registration may be made through an informal conference held to determine whether an agreed settlement order may be secured.

(b) An informal conference shall be voluntary.

(c) A conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(d) The licensee or registrant, the licensee's or registrant's attorney, and department staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(e) The complainant shall not be considered a party in the informal conference, but shall be given an opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the informal conference.

(f) At the conclusion of the informal conference, department representatives may make recommendations for informal disposition of the complaint or contested case, or for any disciplinary action authorized by the Act. The department representatives may also:

(1) conclude that the department lacks jurisdiction;

(2) conclude that a violation of the Act or this chapter has not been established;

(3) order that the investigation be closed; or

(4) refer the matter for further investigation.

§140.45. Formal Hearings.

A formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

§140.46. Guidelines for Issuing Licenses and Registrations to Persons with Criminal Convictions.

(a) The purpose of this section is to comply with the requirements of Occupations Code, Chapter 53, Subchapter C (relating to Notice and Review of Suspension, Revocation, or Denial of License) and with Health and Safety Code, §781.108 (relating to Insurance; Health and Safety Code, §781.103 (relating to Application for License); and Health and Safety Code, §781.151 (relating to Registration Required).

(b) The department may deny a license or registration application or a license or registration renewal application, or revoke, suspend, or place on probation an existing license or registration if an applicant, licensee, or registrant has been convicted of a crime (felony or misdemeanor) according to the following guidelines:

(1) those criminal convictions listed in the Act, §781.106, shall be considered in determining eligibility for an original or renewal license or registration;

(2) those criminal convictions which evidence an unwillingness or inability to comply with the Act or this chapter may be asserted as a basis to deny a license or registration or to institute disciplinary action against an existing license or registration; and

(3) the factors and evidence listed in the Occupations Code, Chapter 53, Subchapter B (relating to Ineligibility for License) shall be considered in determining eligibility for an original or renewal license or registration.

(c) In accordance with the Act, the department may deny an application for a license or registration or for the renewal of a license or registration if the applicant has been convicted in any jurisdiction of a Class B misdemeanor or equivalent offense if the fifth anniversary of the date of conviction has not occurred before the date of application, unless a full pardon has been granted for reasons relating to a wrongful conviction.

§140.47. Immediate Suspension for Failure to Maintain Insurance Coverage.

(a) The department shall immediately suspend the license of a license holder who fails to maintain on file with the department at all times the certificate of insurance required by the Act.

(b) The department may rescind the license suspension if the license holder provides proof to the department that the insurance coverage is still in effect. The license holder must provide the proof in a form satisfactory to the department not later than the 10th day after the date the license is suspended.

(c) After suspension of the license for a period of more than 10 days, the department may not reinstate the license until a new application for licensure is filed accompanied by a proper insurance certificate. The department may deny the application notwithstanding the applicant's submission of proof of insurance:

(1) for a reason that would justify suspending, revoking, or denying a license; or

(2) if, during the suspension, the applicant performed a practice for which a license is required, except as provided by subsection (d) of this section.

(d) If the suspended license has not expired, a license holder may continue to monitor under an existing alarm contract or contract to monitor under an existing alarm contract for 30 days after the date of suspension of the person's license.