

**SUBCHAPTER U. ENHANCED CONTRACTS AND PERFORMANCE MONITORING**  
**28 TAC §1.2201**

**INTRODUCTION.** The Texas Department of Insurance adopts 28 TAC Chapter 1, Subchapter U, consisting of new §1.2201, concerning procedures for contracts for the purchase of goods or services from private vendors. The new sections are adopted without changes to the proposed text published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3239).

**REASONED JUSTIFICATION.** The new section is necessary to implement SB 20, 84th Legislature, Regular Session (2015). SB 20 requires each state agency by rule to establish a procedure to identify contracts that require enhanced contract or performance monitoring and prescribes certain reporting requirements. The adopted rule includes four criteria to determine whether enhanced contract or performance monitoring is appropriate, and establishes the new procedure. The procedure specifies that the procurement director will report all contracts requiring enhanced contract or performance monitoring to the appropriate commissioner. The appropriate commissioner is the commissioner of insurance for contracts related to the department, the commissioner of workers' compensation for contracts related to the Division of Workers' Compensation, or both commissioners for contracts related to both DWC and the department.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** The department received one written comment in support of the proposal, with changes, from one health maintenance organization.

**Comment:** A commenter requests that government contracted managed care organizations and health maintenance organizations be exempt from this rule. The commenter suggests that existing oversight by the Texas Health and Human Services Commission is sufficient.

**Agency Response:** The department declines to make a specific exemption. The rule is intended to apply to contracts where the department is a party. Managed care organizations and health maintenance

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organizations that provide Medicaid and CHIP services do not contract with the department, and therefore do not require a specific exemption.

**STATUTORY AUTHORITY.** The new section is adopted under Government Code §2261.253, Insurance Code §36.001, and Labor Code §402.00113. Government Code §2261.253(c) provides that each state agency by rule establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the officer who governs the agency. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state. Labor Code §402.00113 provides that DWC is administratively attached to the department.

## **TEXT.**

**28 TAC §1.2201. Enhanced Contracts and Performance Monitoring.** Under Government Code §2261.253, the Texas Department of Insurance implements the following procedures for contracts for the purchase of goods or services from private vendors until the contract expires or is completed.

(1) For each contract with a value greater than \$25,000, the procurement director will evaluate whether enhanced contract or performance monitoring is appropriate. The procurement director may evaluate whether enhanced contract or performance monitoring is appropriate for contracts with a value less than \$25,000. Criteria that may be considered include:

- (A) total cost of the contract, including contract renewals;
- (B) risk of loss to the department under the contract;
- (C) department resources available for enhanced contract or performance

monitoring; and

- (D) whether the vendor is a foreign or domestic person or entity.

(2) After evaluation of the contract, if enhanced contract or performance monitoring is appropriate, the procurement director or designee will immediately report to the commissioner of insurance, the commissioner of workers' compensation, or both commissioners, as appropriate, based on the subject matter of the contract:

- (A) the basis for determination as to whether enhanced contract or performance monitoring is appropriate;

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TITLE 28. INSURANCE  
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Adopted Section  
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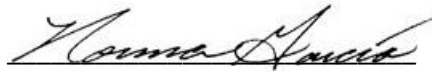
(B) include any serious issues or risks identified with the contract, if applicable;

and

(C) if enhanced contract or performance monitoring is appropriate, the department's plan for carrying out the enhanced contract or performance monitoring.

**CERTIFICATION.** This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on June 30, 2016.



Norma Garcia  
General Counsel  
Texas Department of Insurance

The commissioner adopts new §1.2201.



David C. Mattax  
Commissioner of Insurance

COMMISSIONER'S ORDER NO. 4556