TEXAS REGISTER

Volume 45 Number 37 *September 11, 2020* *Pages 6292 - 6406*

a section of the
Office of the Secretary of State
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Austin, Texas 78711
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Texas Register, **(ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $340.00 ($502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register,* 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

In This Issue

RULE REVIEW

IN ADDITION

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Proclamation 41-3764

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2020, certifying under Section 418.014 of the Texas Government Code that the threats and incidents of violence starting on May 29, 2020, which have endangered public safety, constitute and pose an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, these events have caused or imminently threatened widespread or severe damage, injury, and property loss, among other harms, at a time when the State of Texas is responding to the novel coronavirus (COVID-19) disaster; and

WHEREAS, while all Americans are entitled to exercise their First Amendment rights, it is imperative that order is maintained, all persons are kept safe and healthy, and property is protected; and

WHEREAS, peaceful protestors, many of whom are responding to the senseless taking of life by the reprehensible actions of a few, should themselves be protected from harm; and

WHEREAS, the declaration of a state of disaster has facilitated and expedited the use and deployment of resources to enhance preparedness and response to the ongoing threats, including by ensuring that federal law enforcement officers can fully assist with the efforts; and

WHEREAS, a state of disaster continues to exist in all counties due to threats of widespread or severe damage, injury, and property loss, among other harms;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

Pursuant to Section 418.017, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016(a), I hereby continue the suspension of all relevant provisions within Chapter 1701 of the Texas Occupations Code, as well as Title 37, Chapters 211-229 of the Texas Administrative Code, to the extent necessary for the Texas Commission on Law Enforcement to allow federal law enforcement officers to perform peace officer duties in Texas. Additionally, pursuant to Section 418.016, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 28th day of August, 2020.

Greg Abbott, Governor

TRD-202003587

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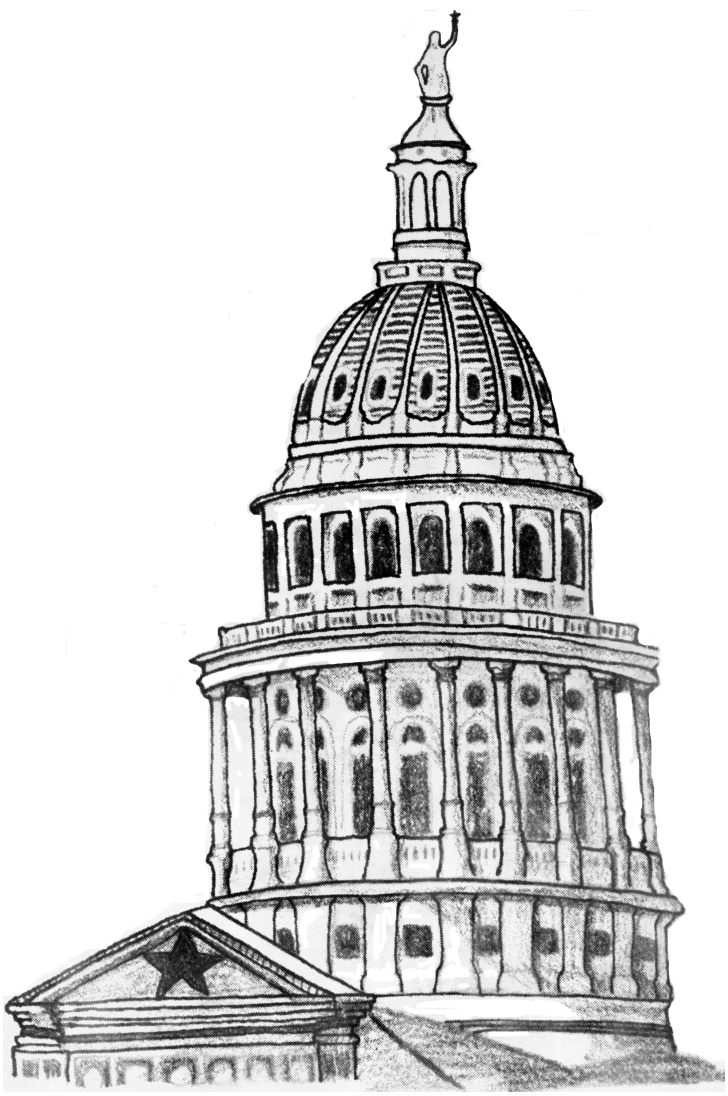

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

Whether an apparel company may contract with candidates, political parties, and political committees to design, manufacture, market, and fulfill sales of campaign merchandise in return for a portion of the sales proceeds, and, if so, whether such a business model involves any reportable campaign contributions. (AOR-636)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

TRD-202003613
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: September 1, 2020

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Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.19

The General Land Office adopts, on an emergency basis, new §15.19, concerning Emergency Measures for Dune Restoration, in response to Hurricane Laura. This rule applies to local governments with authority to issue beachfront construction certificates and dune protection permits in Galveston County and Brazoria County, Texas. These jurisdictions have areas where emergency hazard mitigation measures are needed to reestablish the protective barrier provided by the beach and natural dunes damaged or destroyed by storm tidal surges and overwash.

These emergency rules are adopted on an emergency basis due to the imminent peril to public health, safety, and welfare represented by the damage to structures and protective barriers caused by storm surge, high tides, and erosion resulting from Hurricane Laura. The barriers, including dunes, protect landward structures from future storms and high tide events. They also mitigate the threat to public health and safety from storm surge and flooding. Since it is still hurricane season, this threat is ongoing, and the repairs need to be completed as quickly as possible. As a result of Hurricane Laura, hurricane and tropical storm winds, storm surge, high tides, and overwash caused coastal flooding, and severe erosion of the sand dunes and shoreline. Hurricane Laura made landfall at 1:00 a.m. on August 27, 2020, near Cameron, Louisiana, although its destructive force impacted the upper Texas coast. The local jurisdictions listed above experienced loss in elevation of beach sand. The protective barrier provided by naturally occurring beaches and dunes in these areas has been severely impacted. The General Land Office finds that these emergency rules are necessary because coastal residents, public beaches, and coastal natural resources have been severely damaged and are extremely vulnerable to ongoing injury, damage, and destruction.

The General Land Office has determined it is necessary to adopt emergency rules that allow emergency dune restoration by providing for temporary suspension of certain beachfront construction certificate and dune protection permit application and permitting requirements to enable the implementation hazard mitigation measures. These emergency rules will enable local governments to authorize the restoration of dunes in jurisdictions impacted by Hurricane Laura. The emergency rules shall be effective for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety, and welfare.

Emergency new rule §15.19 provides procedures and requirements for issuance of authorization to undertake emergency dune restoration for littoral property impacted by Hurricane Laura. Section 15.19(c) provides a definition of emergency dune restoration that is applicable to this section. Section 15.19(d) allows the local government to issue authorizations for emergency dune restoration as necessary to eliminate the danger and threat to public health, safety, and welfare. Section 15.19(e) provides that the normal permit process shall not apply to emergency authorizations and that emergency authorizations are valid only for six months. Section 15.19(f) provides that the local government is required to maintain a written record of any emergency dune restoration projects that are authorized. Section 15.19(g) provides requirements and limitations with regard to the location of emergency dune restoration projects. Section 15.19(h) provides guidelines for authorized methods and materials with regard to emergency dune restoration projects. Section 15.19(i) contains prohibitions with regard to dune restoration projects. Section 15.19(j) limits the materials that can be used in dune restoration and prohibits a local government from authorizing construction or repair of a bulkhead or structural shore protection project. Section 15.19(k) states that it does not prohibit a local government from authorizing the removal of portions of damaged bulkheads that threaten public health safety and welfare.

The General Land Office has determined that a takings impact assessment (TIA), pursuant to §2007.043 of the Texas Government Code, is not required for the adoption of these emergency rules. These rules are adopted in response to a grave and immediate threat to life and property and are, therefore, exempt under §2007.003(b) of the Texas Government Code from the TIA requirements.

The new sections are adopted on an emergency basis under the Texas Natural Resources Code, §§63.121 and 61.011, which provide the General Land Office with the authority to identify and protect critical dune areas, preserve and enhance the public's right to use and have access to and from Texas's public beaches, protect the public beach easement from erosion or reduction caused by development or other activities on adjacent land, and establish other measures needed to mitigate for adverse effects on access to public beaches and the beach/dune system. The emergency sections are also adopted pursuant to the Texas Natural Resources Code §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and Texas Water Code §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection. Finally, the new sections are adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice

and comment based upon a determination of imminent peril to the public health, safety or welfare.

The new section affects Texas Natural Resources Code §63.056, 31 TAC §15.3, and 31 TAC §15.4.

§15.19. Emergency Measures for Dune Restoration.

(a) Purpose. The purpose of this section is to allow a local government to grant property owners the ability to immediately undertake emergency repairs to dunes that have been damaged by the effects of Hurricane Laura and to construct dune restoration projects to minimize further threat or damage to coastal residents and littoral property.

(b) Applicability. This section applies only to the emergency dune restoration projects in jurisdictions that have authority to issue beachfront construction certificates and dune protection permits in Brazoria County and Galveston County, Texas. This section shall be in effect for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety, and welfare.

(c) Definitions. The following words, terms, and phrases when used in this section, shall have the following meanings:

(1) Emergency dune restoration--those immediate response measures that must be undertaken to construct a dune, repair a damaged dune, or stabilize an existing dune in order to minimize further threat or damage to coastal residents and littoral property.

(2) Restoration Area--an area where dunes existed before the storm or an area no more than 20-feet seaward of the post-storm line of vegetation.

(d) Local government authorization. The local government with jurisdiction to issue dune protection permits and/or beachfront construction certificates in Brazoria County and Galveston County, Texas, may, in accordance with this section, authorize emergency dune restoration projects in areas where dunes have been damaged by the effects of Hurricane Laura. All authorizations issued under this section must otherwise be in accordance with applicable state and local laws. Under this section, the local government may only authorize emergency dune restoration projects as necessary to minimize the danger and threat to coastal residents and littoral property. Any proposed emergency dune restoration project must comply with the standards provided in this section.

(e) Procedures. The permit and certificate application requirements and procedures of §15.3(s)(4) of this title (relating to Administration) are not applicable to emergency dune restoration projects. However, any person eligible to undertake an emergency dune restoration project must receive prior approval for such actions from the local government officials responsible for approving such actions. Any action that is not necessary for the emergency dune restoration project under this section will require a permit and/or certificate before such action is undertaken. An authorization issued by a local government under this section shall be valid only for six months, after which it will expire. A local government shall not renew an authorization issued under this section.

(f) Written Record. The local government authorizing an emergency dune restoration project shall compile and maintain a record of the names and addresses of the property owners that receive such authorization. For each authorization, the local government must maintain a written record of the actions that it authorized, including the location of the dune and pictures of the emergency dune restoration project before and after completion of the authorized activities, and will make such record available for inspection by the General Land Office upon request. Within one week of the expiration of this rule, the local government shall submit to the General Land Office copies of the complete written record of actions authorized under this section.

(g) Authorized emergency dune restoration. The local government shall require persons to locate restored dunes in the area where dunes existed before the storm, or no more than 20-feet seaward of the post-storm line of vegetation, referred to herein as the restoration area. To the extent practicable, the local government shall ensure that the restoration area follows the location of the post-storm vegetation line. The local government may authorize the restoration of dunes on the public beach only under the following conditions:

(1) The local government shall not allow any person to restore dunes, even within the restoration area, if such dunes would substantially restrict or interfere with the public access to or use of the public beach at normal high tide;

(2) Under no circumstances may sand or other materials be placed below mean high water or mean higher high water; and

(3) Derelict structures and debris should be removed from the area before placement of allowable materials.

(h) Authorized methods and materials for emergency dune restoration. The local government may allow persons to use the following methods or materials for emergency dune restoration:

(1) beach-quality sand having similar grain size and mineralogy as the surrounding beach;

(2) organic brushy material including seaweed; and

(3) sand obtained by scraping accreting beaches only if the scraping is approved by the local government and the areas where scraping is authorized is monitored to determine any effect on the public beach, including, but not limited to, increased erosion of the public beach.

(i) Prohibitions. The local government shall not allow any person to undertake dune restoration projects using any of the following materials:

(1) materials such as bulkheads, sandbags, riprap, concrete, asphalt rubble, building construction materials, and any non-biodegradable items;

(2) sediments containing the hazardous substances listed in Appendix A to §302.4 in Volume 40 of the Code of Federal Regulations, Part 302 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments;

(3) sand obtained by scraping or grading dunes or eroding beaches; or

(4) sand that is not beach-quality sand or an acceptable mineralogy and grain size when compared to the sediments found in the beach/dune system or contains clay.

(j) The local government is not authorized under this rule to allow the use of concrete or to allow the construction, maintenance or repair of bulkheads or other erosion response structures, or to construct or repair a structural shore protection project.

(k) This rule does not prohibit a local government from authorizing the removal of portions of damaged bulkheads that threaten public health safety and welfare.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 1, 2020.

TRD-202003612
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: September 1, 2020
Expiration date: December 29, 2020
For further information, please call: (512) 475-1859


TEXAS
Lone Star State

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 103. HEALTH AND SAFETY

SUBCHAPTER EE. SAFE AND SUPPORTIVE SCHOOL PROGRAM AND TRAUMA-INFORMED CARE POLICY AND TRAINING

19 TAC §§103.1401, 103.1403, 103.1405, 103.1407, 103.1409

The Texas Education Agency (TEA) proposes new §§103.1401, 103.1403, 103.1405, 103.1407, and 103.1409, concerning the safe and supportive school program (SSSP) and trauma-informed care policy and training. The proposed new subchapter would implement Senate Bill (SB) 11, 86th Texas Legislature, 2019, by establishing rules for an SSSP and trauma-informed care.

BACKGROUND INFORMATION AND JUSTIFICATION: The 86th Texas Legislature, 2019, passed SB 11, which addressed policies, procedures, and measures for school safety and mental health promotion in public schools. The bill added Texas Education Code (TEC), §37.115, to require that TEA, in coordination with the Texas School Safety Center, adopt rules to establish an SSSP. The rules are required to incorporate research-based best practices for school safety.

SB 11 also added TEC, §38.036, which requires that each school district adopt and implement a policy requiring the integration of trauma-informed practices in each school environment. School districts must provide training related to trauma-informed care, and TEA is required to develop resources for school districts and adopt rules to administer the requirements for the policy and training.

Proposed new 19 TAC Chapter 103, Subchapter EE, would implement SB 11 as follows.

Proposed new §103.1401, Definitions, would establish the meanings of words and terms specific to the new subchapter.

Proposed new §103.1403, School District and Open-Enrollment Charter School Responsibilities for the Safe and Supportive School Program, would implement TEC, §37.115, by establishing the responsibilities for school districts and open-enrollment charter schools in implementing their SSSPs, including the duties of the superintendent or designee. In accordance with TEC, §37.115, the proposed new rule would require that each school be served by a designated SSSP team that includes multi-disciplinary expertise and facilitates multi-agency collaboration in order to accomplish its SSSP functions. The SSSP team must have appropriate decision-making authority to carry out functions for the SSSP and must be adequately resourced to ensure implementation of the SSSP for the designated school.

Proposed new §103.1405, Safe and Supportive School Program Team Roles and Capacity for Executing Functions, would implement TEC, §37.115, by establishing the SSSP team roles and capabilities for executing SSSP functions. In accordance with TEC, §37.115, the proposed new rule would require each SSSP team to develop and implement the SSSP at the district campus served by the team. The proposed new rule would also identify and describe the expertise categories that must be represented on each team.

Proposed new §103.1407, Requirements for the Six Primary Functions of the Safe and Supportive School Program, would implement TEC, §37.115, by specifying and describing the requirements for the following six functions of the SSSP: promoting a positive school climate; building a multi-tiered system of supports; conducting behavioral threat assessments; ensuring staff is well trained; collecting data to continuously improve; and supporting facility and school safety and security, including planning and implementation of the multi-hazard emergency operations plan. The proposed new rule would make an SSSP team responsible for developing and implementing the SSSP at the district campus served by the team and would authorize a team to serve more than one district campus, provided that each district campus is assigned a team. The proposed new rule would also require each SSSP team to conduct a threat assessment that includes specified components; provide guidance to students and school employees on recognizing harmful, threatening, or violent behavior that may pose a threat to the community, school, or individual; and support the district in implementing the district's multi-hazard emergency operations plan.

Proposed new §103.1409, Trauma-Informed Care Policy and Training, would implement TEC, §38.036, by requiring each school district to adopt and implement a policy requiring the integration of trauma-informed practices in each school environment and include the policy in the district improvement plan. The proposed new rule would require the policy to address available counseling options for students affected by trauma or grief; methods, using resources developed by TEA, for increasing staff and parent awareness of trauma-informed care; and implementation of trauma-informed practices and care by district and campus staff. The proposed new rule would require the methods to include certain training specified by SB 11, including training for new district educators and training for existing district educators at intervals necessary to keep educators informed of developments in the field. Districts would be required to maintain records that include the name of each district staff member who participated in the training and annually report certain information relating to training completion to TEA.

FISCAL IMPACT: Alejandro Delgado, deputy chief of staff for strategic initiatives, has determined that for the first five-year period the proposal is in effect there is no fiscal impact to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation. New 19 TAC Chapter 103, Subchapter EE, would be established to implement SB 11, which required that each school district create and implement an SSSP and include trauma-informed practices in each school environment.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Delgado has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be implementing SB 11 by providing school districts with information on the establishment of threat assessments and SSSP teams. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have a data and reporting impact to implement the requirements of SB 11, as authorized under TEC, §37.115(k) and §38.036(e). The collection of data would be phased in over several years. The first phase would include a survey that must be completed by all school districts and open-enrollment charter schools.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins September 11, 2020, and ends October 12, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 11, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §37.115(b), as added by Senate Bill (SB) 11, 86th Texas Legislature, 2019, which requires the agency, in coordination with the Texas School Safety Center, to adopt rules to establish a safe and supportive school program and requires that the rules incorporate research-based best practices for school safety; and TEC, §38.036(g), as added by SB 11, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules for administering the trauma-informed care policy and training.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §37.115(b) and §38.036(g).

§103.1401. Definitions.

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

(1) Safe and supportive school program (SSSP)--A comprehensive approach to school safety driven by six primary functions, with an overarching goal to achieve both physical safety and psychological safety for all persons in the learning environment, including students, school personnel, service providers, law enforcement, volunteers, parents and guardians, and other community members interacting in the school. The SSSP integrates statutory requirements, including training requirements and research-based practices for school safety and school mental health, for a comprehensive approach to school safety. The six primary functions of the SSSP are:

(A) promoting a positive school climate;

(B) establishing a multi-tiered system of supports;

(C) conducting behavioral threat assessments;

(D) ensuring staff is well trained;

(E) collecting data to continuously improve; and

(F) supporting school facility and school safety and security, including planning and implementation of the multi-hazard emergency operations plan.

(2) Safe and supportive school program team-- A group of individuals established by the board of trustees of a school district that is accountable to ensure that the six primary functions of the SSSP are effectively executed in a school. SSSP teams are comprised of individuals with multi-disciplinary expertise as required by Texas Education Code (TEC), §37.115, and facilitate the school-wide collaboration and multi-agency collaboration that is needed to effectively execute the functions of the SSSP.

(3) Physical safety--The absence of bodily harm, injury, or the threat of harm. It may include providing a secure learning environment through school design and security measures such as, but not limited to, monitored entrances and exits, locked doors, appropriate exterior and interior lighting, and visitor check-in systems.

(4) Psychological safety--The absence of mental or emotional injury or the threat of harm. It may include, but is not limited to, the perception of a safe, supportive, and positive school climate; an environment where students feel empowered to report any safety concerns; the quality of interpersonal interactions among students, school personnel, and peers; relationships that reflect care, high standards, and

positive regard for others; ensuring equitable access to support services and connection to needed resources or treatment; and a sense of belonging and connectedness to a school community that promotes emotional well-being.

(5) School climate--The quality and character of school life, including interpersonal relationships, teaching and learning practices, and organizational structures, as experienced by students enrolled in the school district, parents or caregivers of those students, and personnel employed by, volunteering at, or working in the school. School climate can be measured with indicators to reflect the extent to which the school is perceived and experienced as positive by stakeholders.

(6) Behavioral threat assessment--A proactive, evidence-based approach for identifying individuals who may pose a threat and for providing interventions before a violent incident occurs.

(7) Multi-tiered system of supports (MTSS)--A research-based framework for the systemic alignment of initiatives, resources, staff development, prevention, intervention, services, and supports that integrate research-based practices and best-practice-based programs to support physical and psychological safety and learning in a school that addresses mental and behavioral health and the social-emotional domain for a safe and supportive school pursuant to TEC, §37.115. An MTSS that supports the SSSP includes addressing each of the statutory components under TEC, §38.351, with procedures and practices for each topic, including prevention and intervention for mental and behavioral health, which encompasses substance use; suicide prevention, intervention, and postvention; grief and trauma-informed practices; building skills related to managing emotions; establishing and maintaining positive relationships and positive decision making; positive behavior interventions and supports; positive youth development; positive, safe, and supportive school climates; and practices that include coordinated services and supports for physical and psychological safety. It is informed by a campus needs assessment and a quality self-assessment that addresses each of these components as well as behavioral threat assessment data, staff development, and academic and behavior data. It is guided by SSSP training for the MTSS and a comprehensive service delivery plan that includes staff development, procedures and practices, universal prevention, and tiered interventions that are equitably available to all students in collaboration with their parents or guardians.

(8) School facility and school safety and security--A comprehensive approach to school safety that uses multiple sources of information, such as school climate surveys, best practices, school facility standards, school safety and security audits, multi-hazard emergency operations plans, and other relevant material, to inform and develop safety and security. The information from these sources should also be used to enhance and update the use and implementation of these same sources.

§103.1403. School District and Open-Enrollment Charter School Responsibilities for the Safe and Supportive School Program.

(a) Each school campus shall be served by a designated safe and supportive school program (SSSP) team.

(1) The SSSP team shall have appropriate decision-making authority to carry out functions for the SSSP and must be adequately resourced to ensure implementation of the SSSP for the designated school.

(2) The superintendent or designee shall determine the structure of an SSSP team and its reporting accountabilities in compliance with Texas Education Code (TEC), §37.115, and this section based on local needs, including consideration of the size of the school district or open-enrollment charter school. One of the following SSSP team structures must be selected to ensure each campus is served by an SSSP team:

(A) single-campus team, where a dedicated team serves each individual campus; or

(B) multiple-campus team, where a team or teams serve multiple campuses, provided that each school campus is served by a team.

(b) The superintendent or designee shall:

(1) designate SSSP team members in the expertise categories identified in §103.1405(a) of this title (relating to Safe and Supportive School Program Team Roles and Capacity for Executing Functions) to create a multi-disciplinary team pursuant to TEC, §37.115;

(2) establish roles, responsibilities, reporting relationships, policies and procedures, and an action plan to guide the work of the SSSP team in accordance with school district or open-enrollment charter school policies, procedures, and applicable state and federal laws and rules;

(3) designate human resources expertise to a committee, along with other required expertise categories, if a committee is designated to oversee SSSP teams, pursuant to TEC, §37.115;

(4) ensure strategies for the SSSP team to:

(A) plan and implement SSSP multi-tiered system of supports (MTSS) with training from the Texas Education Agency, which includes domains for comprehensive school mental health and a self-assessment process; and

(B) develop practices to build on and coordinate with any existing systems of student services in a school, such as positive behavior interventions and supports, a school mental health team, a student support services team, or another MTSS process that is currently operational in a school, in order to strengthen effective collaboration and address all of the components in TEC, §38.351, and coordinate with other related statutes for learning supports and school safety, while preventing duplication of effort;

(5) ensure that the MTSS components in TEC, §38.351, and staff development related to school safety are addressed in needs assessments to help inform campus improvement plans and the district improvement plan and that SSSP goals and activities are integrated into campus and district planning;

(6) ensure that SSSP team members employed by the school district or open-enrollment charter school have adequate duty time allocated to fully and effectively implement the functions required by the SSSP; and

(7) execute multi-agency written agreements to access any multi-disciplinary expertise needed on SSSP teams and to provide services and supports needed in the MTSS comprehensive service delivery plan. If a professional in an expertise category is a non-district employee, a written agreement with the terms of the relationship must be established.

§103.1405. Safe and Supportive School Program Team Roles and Capacity for Executing Functions.

(a) The following expertise categories must be represented on each safe and supportive school program (SSSP) team to ensure that the team is multi-disciplinary in accordance with Texas Education Code (TEC), §37.115:

(1) classroom instruction--a current school employee such as, but not limited to, a general education teacher; health education teacher; teacher leader or coach; coordinator or director responsible

for curriculum and instruction; or coordinator or director responsible for wellness and mental and behavioral health;

(2) special education--an individual who must be a current school employee, an employee of a community organization, or a contracted service provider such as, but not limited to, a special education teacher, licensed specialist in school psychology (LSSP), diagnostician, special education counselor, behavior specialist, school health and related services professional, school social worker, or director of special education;

(3) school administration--a current school employee such as, but not limited to, a campus-based principal, an assistant principal, a campus behavior coordinator, or a district-level administrator;

(4) school counseling--a current school employee with a professional school counselor certification by the State Board for Educator Certification under Chapter 239, Subchapter A, of this title (relating to School Counselor Certificate);

(5) behavior management--an individual who must be a current school employee, an employee of a community organization, or a contracted service provider such as, but not limited to, a behavior specialist; a school social worker; an LSSP; a non-physician mental health professional; a trained teacher-behavior interventionist; a community organization youth development specialist; a social-emotional development specialist; a restorative discipline practices coordinator; a community organization behavioral health worker; a licensed chemical dependency counselor (LCDC); a recovery coach; a juvenile justice expert; or a community expert with research-based knowledge of effective behavior and school discipline practices, child and adolescent development, the needs of students with disabilities, or juvenile and education law;

(6) mental health and substance abuse--an individual who must be a current school employee, an employee of a community organization, or a contracted service provider that is a non-physician mental health professional who is a licensed clinical social worker; a licensed marriage and family therapist; a licensed professional counselor (LPC); a licensed clinical psychologist; a master's level psychiatric/mental health nurse, preferably an advanced practice nurse; or a licensed master social worker or an LPC intern if the organization ensures an arrangement for clinical supervision will be provided as required by relevant state licensing boards. This expertise may be provided via telehealth. Based on the campus needs assessment, additional substance abuse experts may be included on the SSSP team such as an LCDC, a peer recovery specialist, or a substance abuse prevention professional;

(7) school safety and security--an individual who may be a current school employee, an employee of a community organization, or a contracted service provider such as, but not limited to, a school district police officer; school resource officer; school safety officer; or community expert with relevant knowledge of school safety and security, which may include research-based knowledge of effective behavior and school discipline practices, child and adolescent development, the needs of students with disabilities, or juvenile and education law;

(8) emergency management--an individual who may be a current school employee, an employee of a community organization, or a contracted service provider such as, but not limited to, an expert managing the multi-hazard emergency operations plans for the school district or open-enrollment charter school or a community or county agency expert in emergency management. This role may be designated to serve in an as-needed consultative role for SSSP teams for many school districts or open-enrollment charter schools in a county and is not required to attend SSSP team meetings in schools. Any written agreements should be coordinated through the school district or open-enrollment charter school safety and security committee;

(9) law enforcement--an individual who must be a current school employee, an employee of a law enforcement agency, or a contracted service provider such as, but not limited to, a school resource officer, a school district or an open-enrollment charter school law enforcement officer, or any active or retired peace officer who meets the needs of the organization; and

(10) parent and family engagement--an individual who may be a current school employee, an employee of a community organization, or a contracted service provider such as, but not limited to, an adult with relevant knowledge of research-based parent and family involvement practices and adolescent development; a parent or family engagement specialist or liaison; a parent or family member volunteer such as a parent-teacher organization member; a paraprofessional who works with students with disabilities and their parents or caregivers; or a nurse or social worker who provides home visits, facilitates parenting classes, or provides other support to families.

(b) A school district or open-enrollment charter school may:

(1) identify and appoint experts to serve on multiple SSSP teams within the school district or open-enrollment charter school;

(2) appoint more than one representative to serve in each expertise category on each SSSP team; and

(3) appoint a single representative to serve in more than one expertise category on the team, while ensuring that the resulting SSSP team composition is multi-disciplinary.

(c) Individuals with expertise accessed through written community partnership agreements and designated to SSSP teams are not required to be present in each school to conduct each behavioral threat assessment. However, subject matter experts must be accessible to each SSSP team for planning meetings, planning and reviewing the multi-tiered system of supports (MTSS) comprehensive service delivery plan, and consultation with district-employed SSSP team members who are conducting a behavioral threat assessment, as determined locally, through a communication method determined by the superintendent or designee.

(d) The superintendent shall determine the role of the campus-based principal related to the SSSP team that serves the school for which the principal is responsible.

(e) Each SSSP team member and any additional staff who may be assigned to deliver services for a behavioral threat assessment or services in the MTSS must have sufficient time and effort available regarding assigned duties to execute SSSP functions.

(f) As a responsibility of individual planning, systems support, and responsive services under the Texas Model for Comprehensive School Counseling Programs under TEC, §33.005, a professional school counselor serving a school shall support the SSSP in a role that aligns with the duties of a professional school counselor on assigned campuses, including having time allocated to collaborate on planning and implementing interventions in the MTSS, attending training, and receiving technical assistance from the school's regional education service center (ESC) and the Texas Education Agency.

(g) Members of the SSSP team, supported by any additional school-employed staff, community organization partner staff, and contracted service providers delivering prevention and intervention services and supports, shall be systemically organized to collaborate and cooperate on execution of the MTSS comprehensive service delivery plan developed under the leadership of and with oversight by the SSSP team for a campus.

(h) The SSSP team shall collaborate with other existing teams, such as the campus advisory team, campus leadership team, open-enrollment charter school or school district leadership team, school safety and security committee, and school health advisory committee, as determined locally, to promote both student learning and a safe and supportive school.

(i) The superintendent or designee shall assign one SSSP team member with facilitation responsibilities for each team. Facilitation may include team activities such as convening members when needed to conduct a behavioral threat assessment, assess needs, identify resources for prevention and intervention services and supports, review or develop the MTSS comprehensive service delivery plan, coordinate with community partners, review data and monitor the impact of interventions after a behavioral threat assessment, review records and ensure that staff are well trained, and plan execution of the six primary functions of the SSSP.

(j) The SSSP team role includes:

(1) reviewing data such as best-practice research and state and local data sources, which may include survey data, school climate surveys, needs assessments, behavior and school discipline data, academic data, community data, behavioral threat assessment data, and local program goals and evaluation data required by any state-funded program, grant, or federal program administered by the school district or open-enrollment charter school;

(2) engaging with parents, guardians, and students to provide input; and

(3) engaging with professionals to help inform planning for the SSSP, including the MTSS comprehensive service delivery plan.

(k) The SSSP team must analyze resources and work with administrators at the school district or open-enrollment charter school to streamline and efficiently align campus resources, services, and supports for prevention and intervention in the MTSS. The resources, services, and supports must meet student and campus needs for coordinated student support services, include research-based practices and best practice-based programs, and address the overarching goals of the SSSP.

(l) The superintendent may contract with external entities for expert technical assistance and support for the development, implementation, training, and evaluation of the SSSP, such as technical assistance to implement an MTSS with a continuum of school mental health prevention and intervention services, conduct and analyze school climate surveys, provide mental health training for staff, or facilitate a data-driven program evaluation on the impact of the SSSP through a university, non-profit organization, ESC, or other partner. Behavioral threat assessment consultants must be on the registry of the Texas School Safety Center.

§103.1407. Requirements for the Six Primary Functions of the Safe and Supportive School Program.

(a) Purpose. A safe and supportive school program (SSSP) has six primary functions, as described by subsections (b)-(g) of this section, with a goal of achieving both physical safety and psychological safety for all persons in the learning environment.

(b) SSSP Function 1. Promoting a positive school climate.

(1) Each school district or open-enrollment charter school shall select a school climate survey from a list provided by the Texas Education Agency (TEA) and annually implement the survey for school personnel, students, and parents.

(2) The school climate survey shall be conducted by, or disaggregated by, each campus to inform annual planning for each school district, open-enrollment charter school, and campus.

(3) Each school district or open-enrollment charter school should ensure the equitable distribution of school climate surveys, including posting notices and instructions and providing surveys in languages accessible for local families to participate to the extent practicable, engaging school- and community-based organizations to assist with the survey process, and ensuring ample time is provided for all students, families, and school personnel to complete surveys.

(4) Climate survey results shall be reviewed by the SSSP team serving each school to help inform planning for the SSSP, including the behavioral threat assessment process, the multi-tiered system of supports (MTSS), and staff training.

(5) As a component of ensuring a positive, safe, and supportive school climate, school districts and open-enrollment charter schools must inform students on the district or charter school expectations and strategies for the school community to prevent bullying and the procedure for students to safely report bullying. In accordance with TEC, §37.115, incidents of bullying must be reported and assessed for intervention through a behavioral threat assessment under subsection (d) of this section.

(c) SSSP Function 2. Establishing an MTSS.

(1) An MTSS is a whole-school approach that promotes a safe and supportive school and promotes success for all students.

(2) An MTSS should build on and be coordinated through any existing student support services program that provides for a continuum of mental and behavioral health services and supports.

(3) An MTSS is informed by an annually-updated campus needs assessment that includes, but is not limited to, assessing and addressing data regarding staff development needs under the SSSP, best practice-based programs, and research-based practices and procedures for the topics and components listed under Texas Education Code (TEC), §38.351.

(4) An MTSS is informed by a resource map of available resources that includes community and campus services and supports that are available to align, coordinate, and systemically connect through the MTSS for campus-wide prevention and intervention for a safe and supportive school.

(5) An MTSS is guided by a comprehensive service delivery plan that addresses foundational staff training under subsection (e) of this section and, at a minimum, addresses universal prevention and tiered interventions for each topic under TEC, §38.351, with research-based practices and best practice-based programs that may include the recommended practices and programs by TEA and the Texas Health and Human Services Commission. Each school district and open-enrollment charter school must also develop practices and procedures, in accordance with TEC, §38.351(i), for each of the following topics:

(A) early mental health prevention and intervention;

(B) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision making;

(C) substance abuse prevention and intervention;

(D) suicide prevention, intervention, and postvention;

(E) grief-informed and trauma-informed practices;

(F) positive school climates;

(G) positive behavior interventions and supports;

(H) positive youth development; and

(I) safe, supportive, and positive school climate.

(6) School district and open-enrollment charter school practices and procedures for each topic listed under paragraph (5) of this subsection must be coordinated through the SSSP. The practices and procedures are required to include, minimally, the following in accordance with TEC, §37.115 and §38.351(i):

(A) a procedure for providing notice of a recommendation for early mental health or substance abuse intervention regarding a student to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs;

(B) a procedure for providing notice of a student identified as at risk of attempting suicide to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs;

(C) the development of a reporting mechanism that may designate at least one person to act as a liaison officer for the purpose of identifying students in need of early mental health or substance abuse intervention or suicide prevention;

(D) a description of available counseling alternatives for a parent or guardian to consider when their child is identified as possibly being in need of early mental health or substance abuse intervention or suicide prevention;

(E) procedures to support the return of a student to school following hospitalization or residential treatment for a mental health condition or substance abuse; and

(F) procedures for suicide prevention, intervention, and postvention.

(7) The practices and procedures for each topic under paragraph (5) of this subsection may address multiple areas together.

(8) The procedures under paragraph (6) of this subsection must prohibit the use without the prior consent of a student's parent or guardian of a medical screening for a student under 18 years of age as part of the process of identifying whether the student is possibly in need of early mental health or substance abuse intervention or suicide prevention in accordance with TEC, §38.351. Parent or guardian consent must be obtained before providing a mental health service in accordance with TEC, §37.115. However, the procedures shall not prevent an employee of the school from acting immediately to prevent an imminent threat or respond to an emergency prior to parent or guardian notification or consent, including crisis counseling protocols for professional school counselors and non-physician mental health professionals employed by the school to prevent harm to self or others, such as suicide or law enforcement procedures in an emergency situation as permissible by law.

(9) The MTSS practices and procedures must be included in the annual student handbook and the school district or open-enrollment charter school improvement plan under TEC, §11.252, and state that the district or charter school will coordinate the practices and procedures for the topics under paragraph (5) of this subsection with the SSSP.

(10) The MTSS practices and procedures for providing prevention and tiered interventions and supports, including interventions for students referred as a result of a behavioral threat assessment, referred through a student support services process, or requested by parents or guardians, must be guided by the MTSS comprehensive service delivery plan for each campus that:

(A) plans for school-wide best practice-based programs and research-based practices for promoting school mental and behavioral health and safety through universal prevention and tiered interventions;

(B) engages in multi-agency collaboration with community service providers as part of a system of care, including considering resources identified by education service centers (ESCs) on a regional inventory of resources under TEC, §38.252, such as coordination with available Community Resource Coordination Groups (CRCGs), Local Mental Health Authorities (LMHAs), the Texas Medical Assistance Program (Medicaid), youth development programs, prevention and early intervention programs, hospitals, clinics, other public and private organizations, and service providers;

(C) implements systems of multi-disciplinary teaming and service coordination to develop and deliver prevention, intervention, and supports services;

(D) initiates written agreements for multi-agency collaboration with resources available in the community, such as with prevention programs for mental and behavioral health and emotional well-being, telehealth providers, and mental and behavioral health providers;

(E) includes culturally competent practices for integrating student, community, and family engagement into developing and implementing the MTSS comprehensive service delivery plan;

(F) includes school-wide integration of grief and trauma-informed care practices as adopted by the school district or open-enrollment charter school policies under TEC, §37.006;

(G) provides equitable access for teachers, parents and guardians, and students through transparent referral pathways for accessing available services and supports;

(H) uses research-based practices and best practice-based programs for prevention, intervention, services, and supports;

(I) uses data to evaluate the impact of the SSSP, prevention, intervention, services, and supports on students and the school climate, making appropriate adjustments based on data;

(J) includes a case management tool and process for tracking and monitoring intervention results for services and supports implemented as the result of a behavioral threat assessment;

(K) is informed by a quality self-assessment tool for effective planning and implementation of the MTSS under the SSSP that is approved by TEA; and

(L) is updated at the beginning of each school year, and when needed to add or adjust training, prevention, interventions, services, and supports, and adopted by the SSSP team in coordination with the campus administrator.

(d) SSSP Function 3. Conducting behavioral threat assessments. The SSSP team shall conduct behavioral threat assessments on harmful, threatening, or violent behaviors, including assessing behaviors identified in TEC, §37.115;

(e) SSSP Function 4. Ensuring staff is well trained. The following requirements for training apply. Other training requirements related to school safety that are not addressed in this subchapter shall also be coordinated with the SSSP, such as mandatory drills and bleeding control. SSSP teams or stakeholders may recommend additional training based on assessed needs for a well-trained staff and continuous quality improvement. The additional trainings may be provided or accessed as determined locally by the school district or open-enrollment

charter school to ensure a safe and supportive school. This subchapter does not apply to specific training that may be required by individual professionals for licensing or certification or for other requirements.

(1) Training in behavioral threat assessment pursuant to TEC, §37.115, must meet the following requirements.

(A) SSSP team members shall attend initial behavioral threat assessment training provided by an ESC or the Texas School Safety Center (TxSSC).

(B) SSSP team members may participate in any ongoing or supplemental behavioral threat assessment training that may be offered by an ESC or the TxSSC to support behavioral threat assessment as determined locally.

(2) The staff development for mental and behavioral health required under TEC, §21.451 and §37.006, must be aligned with staff mental and behavioral health resources and training required under TEC, §38.351; the local practices and procedures specified in subsection (c)(6) of this section and the MTSS comprehensive service delivery plan; and paragraph (4) of this subsection. Training shall be provided to all staff who interact regularly with students, including teachers, administrators, school counselors, law enforcement officers, social workers, and other staff, and shall be in accordance with TEA-approved training lists for specific roles, such as educators and counselors, to ensure appropriate professional development for the role in a school. Additional personnel may be required to be trained by statute or as locally determined on identified topics as appropriate for their roles. Training shall be selected from the list of recommended best practice-based programs and research-based practices posted on the TEA website or, when appropriate, locally customized training that meets the content requirements identified in subparagraph (A) of this paragraph.

(A) The content requirements for mental and behavioral health training include:

(i) suicide prevention, intervention, and postvention. The following topics must be addressed, and each superintendent shall ensure the training is locally supplemented with information so that all staff are aware of the suicide prevention policy, procedures, and practices for the school:

(I) recognizing students at risk of attempting suicide, including students who are or may be the victims of or who engage in bullying;

(II) recognizing students displaying early warning signs and a possible need for early mental health or substance abuse intervention. Warning signs may include declining academic performance, depression, anxiety, isolation, unexplained changes in sleep or eating habits, and destructive behavior toward self and others;

(III) intervening effectively with students by providing notice and referral to a parent or guardian so that appropriate action, such as seeking mental health or substance abuse services, may be taken by a parent or guardian;

(IV) assisting students in returning to school following mental health treatment or treatment for a suicide attempt; and

(V) understanding the process and procedures for reporting and acting on suicide risks according to the district or charter school suicide prevention policy, practices, and procedures, which include a parent or guardian notification procedure;

(ii) recognizing signs of mental health conditions and substance abuse. This topic may be included with training on suicide prevention as described in clause (i) of this subparagraph or provided in a recommended program such as Youth Mental Health First Aid;

(iii) strategies for establishing and maintaining positive relationships among students and between students and teachers, including conflict resolution;

(iv) the effect of grief and trauma on mental health, student learning, and behavior, including information on the ways evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma, including information on vicarious trauma and self-care strategies for educators and staff; and

(v) preventing, identifying, responding to, and reporting incidents of bullying. This topic may be included with training on conflict resolution and strategies for establishing and maintaining positive relationships as described in clause (iii) of this subparagraph.

(B) Training on mental and behavioral health must be offered according to the following schedule. Training provided in the 2019-2020 school year counts for the first year of training in the cycle of basic full training required.

(i) New employees shall receive full training on the topics under subparagraph (A) of this paragraph annually as a part of new employee orientation.

(ii) Full training on the topics under subparagraph (A) of this paragraph and local procedures and practices shall be provided to all staff who regularly interact with students at least every three years using content selected from the recommended list of research-based practices and best practice-based programs provided on the TEA website and may include face-to-face, online, or blended learning methods. Full training means selecting staff development that reflects advancement in the field; is designed to support effective local procedures, practices, services, and supports on each of the topics; is appropriate training for staff roles receiving training; and is supplemented by providing awareness information of corresponding local policies, procedures, and practices with any local guidance on how the training contributes to a safe and supportive school.

(iii) An awareness-booster training shall be provided annually to refresh all staff who regularly interact with students and may include face-to-face, online, blended learning, or other communication methods, with materials provided to employees that include local policies, procedures, practices, services, and supports on the topics under subparagraph (A) of this paragraph along with any current guidance available to reinforce information related to implementation of each training topic. The awareness-booster training must be completed by the end of each school year and may be conducted during annual staff development prior to the start of each school year, in a series of regular staff meetings, or through other locally determined communication methods on a schedule determined by the school district or open-enrollment charter school.

(3) Training related to trauma-informed care pursuant to TEC, §38.036, must meet the requirements specified in §103.1409 of this title (relating to Trauma-Informed Care Policy and Training).

(4) Training must be completed in Psychological First Aid for Schools or an equivalent training chosen from a list approved by the TxSSC and commissioner of education.

(A) Two active SSSP team members are required to be trained on supporting the integration of psychological safety strategies into the school district's or open-enrollment charter school's multi-hazard emergency operations plan to help inform a school's planning and

execution of psychological safety in the learning environment in a crisis situation.

(B) Training may be completed in person or online.

(5) Other trainings identified by the commissioner related to the SSSP include the following. The trainings must be completed on a timeline and in a format determined by TEA and specified in SSSP guidance documents.

(A) MTSS for the SSSP. School-employed members of each SSSP team serving a school, including the campus administrator, must attend an initial MTSS for the SSSP training provided by TEA. Other professionals collaborating with the SSSP team to implement the MTSS for each school may also attend this training.

(B) SSSP orientation. SSSP team members serving a school must participate in an SSSP orientation.

(6) Each SSSP team must report to TEA the number and percentage of school personnel trained under TEC, §37.115.

(f) SSSP Function 5. Collecting data to continuously improve.

(1) Each SSSP team must report data on the team's activities for elements identified in statute and other information requested by TEA on a timeline and in a format determined by TEA and specified in SSSP guidance documents.

(2) School districts, open-enrollment charter schools, and campuses shall protect personal and confidential information of students in accordance with the Family Educational Rights and Privacy Act.

(3) SSSP teams shall meet annually to review data related to the outcome and impact of the SSSP, including any disproportionality identified in the data, using research-based best practices in program evaluation and continuous quality improvement.

(g) SSSP Function 6. Supporting facility and school safety and security.

(1) SSSP teams shall support the school safety and security committee with planning and implementation of the multi-hazard emergency operations plan.

(2) SSSP teams shall collaborate with the school safety and security committee and others to support awareness training for school safety leaders, mental health professionals, educators, professional school counselors, and administrators on the strategies, procedures, and protocols for addressing both physical and psychological safety in a crisis situation, including suicide prevention, intervention, and postvention.

(3) SSSP teams shall support awareness training for staff and substitute teachers on the multi-hazard emergency operations plan. The training must address the provisions of the plan that ensure physical and psychological safety, including supporting the implementation of facility standards, participating in mandatory drills, and conducting audits.

(4) SSSP teams shall provide guidance and promote research-based best practices for students, parents, and school employees on strategies for preventing, identifying, reporting, and responding to incidents of bullying; building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision making; and trauma-informed care practices to build a safe and supportive school climate.

(5) SSSP teams will promote equitable practices and school connectedness for at-risk and vulnerable student populations such as those identified by the Elementary and Secondary Education Act, 20 United States Code §6301 et seq., and TEC, Chapter 29, Subchapter C; and provide encouragement for students and families to engage with services and supports available in the MTSS, such as positive youth development programs, initiatives to support parents and families, support groups and counseling, and other research-based initiatives to promote physical and psychological safety.

§103.1409. Trauma-Informed Care Policy and Training.

(a) Trauma-informed care policy.

(1) In accordance with Texas Education Code (TEC), §38.036, each school district and open-enrollment charter school shall develop and implement a trauma-informed care policy requiring the integration of trauma-informed practices in each school environment and include the policy in the district or charter school improvement plan.

(2) The trauma-informed care policy must require the school district or open-enrollment charter school to use resources identified or developed by TEA for:

(A) increasing staff and parent or guardian awareness of how grief and trauma affect mental health, student learning, and behavior and how evidence-based, grief informed, and trauma-informed strategies support the academic success of students affected by grief and trauma; and

(B) implementation of trauma-informed practices and care by district, charter school, and campus staff.

(3) The trauma-informed care policy must:

(A) identify that a list of counseling options for students affected by mental health conditions, substance abuse, grief, or trauma shall be posted on the school district or open-enrollment charter school campus website, or the district website if campus websites are not provided, and require the list of counseling options to be easily accessible to parents and students who are seeking counseling support. The list shall include counseling options available at a campus, in the school district or open-enrollment charter school, and in the community. The list of available counseling options shall be updated at least annually as resources are identified;

(B) identify methods used by the school district or open-enrollment charter school for increasing parent or guardian awareness of:

(i) the effects of grief and trauma on mental health, student learning, and behavior;

(ii) the ways evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma;

(iii) how to access information on grief-informed and trauma-informed practices to consider using at home, such as handouts in the counselor's office, resources on the campus website, consultation with student services personnel, or parent awareness sessions; and

(iv) the available counseling options, which must be posted on the campus website;

(C) identify methods used by the school district or open-enrollment charter school for increasing staff awareness of:

(i) the effects of grief and trauma on mental health, student learning, and behavior;

(ii) the ways evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma; and

(iii) the implementation of trauma-informed care by staff, including required training; and

(D) address how the school district or open-enrollment charter school is integrating trauma-informed care.

(4) The trauma-informed care policy must specify that the school district or open-enrollment charter school requires trauma-informed care training for all staff using resources identified or developed by TEA.

(b) Trauma-informed care training.

(1) Trauma-informed care training must:

(A) be provided through a program or resources selected by the school district or open-enrollment charter school from a TEA-approved list of recommended best practice-based programs and research-based practices posted on the TEA website and must include a component on vicarious or secondary trauma and strategies for self-care for teachers and staff;

(B) be provided for all school district and open-enrollment charter school educators, which under the SSSP includes training components for teachers, principals, counselors, and all staff who regularly interact with students, through appropriate methods to provide grief-informed and trauma-informed care awareness for all staff who interact regularly with students and caregivers, including methods to increase awareness of local policies, procedures, and practices;

(C) use resources selected from a list of recommended best practice-based programs and research-based practices posted on the TEA website that includes options for the school district or open-enrollment charter school to provide required training and awareness for each staff person who interacts regularly with students and parents or guardians and awareness for parents or guardians;

(D) be appropriate for the role of the staff member. Advanced training needs for school leaders, counselors, and mental health professionals who support educators should be considered to effectively build and lead a trauma-informed school; and

(E) be offered according to the following schedule, with training provided during the 2019-2020 school year fulfilling the minimum training requirements for the first full year of training:

(i) annually as a part of new employee orientation;

(ii) minimally every three years, full training that is appropriate for the role of the staff member. Advanced training needs for school leaders, counselors, and mental health professionals who support educators should be considered; and

(iii) annually as an awareness-booster training through locally designed methods to refresh all staff who interact regularly with students to provide continued awareness about the school district's or open-enrollment charter school's trauma-informed care policy and the required integration of trauma-informed care practices. The awareness-booster training must include guidance materials relating to procedures, updates to policies and current best practices, and strategies that integrate the trauma-informed care best practices training into the school environment. The training may be provided in a series of staff meetings throughout the year as determined by the school district or open-enrollment charter school or by another locally developed method. The training must include a component on vicarious or secondary trauma and strategies for self-care for teachers and staff.

(2) Each school district and open-enrollment charter school shall record the name of each staff member who participates in the full training and awareness-booster training.

(3) Each school district and open-enrollment charter school shall report annually to TEA, in a timeline and format requested by TEA, the following information for the district or charter school as a whole and for each school campus:

(A) the number of teachers, principals, and counselors who have completed training under this section; and

(B) the number of teachers, principals, and counselors employed by the district.

(4) If the school district or open-enrollment charter school determines that it does not have sufficient resources to provide the trauma-informed care training, it may meet the training requirements by partnering with an ESC or community mental health organization to provide training from the TEA-approved list to the district or charter school.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2020.

TRD-202003586
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER V. [~~AUTOLOGOUS~~] ADULT STEM CELLS

25 TAC §1.462

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §1.462, concerning Informed Consent for Investigational Stem Cell Treatment.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill (H.B.) 3148, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code, §1003.054(c) to require the Executive Commissioner of HHSC, by rule, to adopt an informed consent form that must be signed by an eligible patient before receiving an investigational stem cell treatment. The Executive Commissioner delegated the rule amendment and development of the informed consent form to DSHS. H.B. 3148 requires the informed consent form to provide notice that DSHS administers provisions relating to the administration and oversight of investigational stem cell treatment to certain patients.

Before this proposed amendment, Texas Health and Safety Code, Chapter 1003, did not require DSHS to adopt an informed consent form. Under the current §1.462, physicians are required to provide a written informed consent to the eligible patient.

The proposed amendment and informed consent form help ensure that eligible patients are informed about the potential risks and hazards of investigational stem cells treatments not approved for general use by the United States Food and Drug Administration.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §1.462 requires an eligible patient to sign a DSHS informed consent form before receiving a voluntary investigational stem cell treatment.

Proposed amendment to subsection (a) adopts the DSHS written informed consent form for use by physicians administering and patients receiving investigational stem cell treatments. It also announces that the informed consent form is available on the DSHS website. This amendment replaces current subsection (a) requiring the physician to provide the written consent, which must meet or exceed the requirements found in 45 CFR §46.116.

Proposed amendment to subsection (b) requires the physician to obtain additional written informed consent required to comply with other laws or rules established by Texas Health and Safety Code, Chapter 1003. This subsection is necessary to ensure patients receive complete information about risks and hazards specific to their treatment. DSHS is unable to produce a comprehensive form applicable to all investigational stem cell treatments, or a form that can remain current with treatments at various stages of research or clinical trials. Current subsection (b) is deleted with this proposed amendment. It requires the patient to sign the informed consent form. This language is considered redundant, as a signature is required in the proposed DSHS informed consent form.

FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of DSHS employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to DSHS;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will not expand, limit, or repeal existing rule;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Donna Sheppard, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045, does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, does not impose a cost on regulated persons, and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner, has determined that for each year of the first five years the rule is in effect, the public benefit will be that eligible patients receiving a voluntary investigational stem cell treatment will be informed about the potential risks and hazards of treatments not approved for general use by the United States Food and Drug Administration. Patients will have the opportunity to ask questions about their condition, alternative forms of treatment, risks of non-treatment, the procedures to be used, and have sufficient information to give informed consent.

Donna Sheppard, Chief Financial Officer, has also determined that for the first five years the rule is in effect there are no anticipated economic costs to persons who are required to comply with the proposed rule because it only requires patients to sign an informed consent form.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule DSHS-20R014" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, §1003.054, which authorizes the Executive Commissioner of HHSC to adopt rules requiring an informed consent form that must be signed by an eligible patient before receiving an investigational stem cell treatment. The amendment is also authorized by Texas Government Code, §531.0055 and Texas Health and

Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by DSHS, and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendment implements Texas Health and Safety Code, Chapters 1001 and 1003 and Texas Government Code, §531.0055.

§1.462. Informed Consent for Investigational Stem Cell Treatment.

(a) Pursuant to Texas Health and Safety Code, §1003.054(c), the Department of State Health Services adopts a written informed consent form for use by physicians administering and patients receiving investigational stem cell treatment under Texas Health and Safety Code, Chapter 1003, Subchapter B. The informed consent form is available on the Department of State Health Services website at www.dshs.texas.gov/chronic/.

~~[(a) A physician administering an investigational stem cell treatment under this subchapter shall provide a written informed consent to the eligible patient. The written informed consent must meet or exceed the requirements found in 45 CFR §46.116.]~~

(b) The physician shall obtain any additional written informed consent required to comply with other laws or rules established by Texas Health and Safety Code, Chapter 1003.

~~[(b) The patient must sign the informed consent form. If the patient is a minor or lacks the mental capacity to provide informed consent, a parent, guardian, or conservator, shall sign the informed consent form.]~~

(c) The informed consent form must be maintained in the patient's medical record.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 28, 2020.

TRD-202003572
Barbara L. Klein
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 939-7575

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CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §97.3, §97.4

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to §97.3, concerning What Condition to Report and What Isolates to Report or Submit, and §97.4, concerning When and How to Report a Condition or Isolate.

BACKGROUND AND PURPOSE

The purpose of the amendments is to clarify the conditions and diseases that must be reported; clarify the minimal reportable information requirements for the conditions and diseases; and adjust the list of reportable diseases to include diseases and conditions of concern to public health. The amendments comply with guidance from the Centers for Disease Control and Prevention regarding surveillance for reportable conditions, and allow DSHS to conduct more relevant and efficient disease surveillance. The amendments comply with Texas Health and Safety Code, Chapter 81, which requires DSHS to identify each communicable disease or health condition which is reportable under the chapter.

The proposal is also being revised to comply with Texas Government Code, §2001.039, which requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001 (Administrative Procedure Act). Sections 97.3 and 97.4 have been reviewed and DSHS has determined that the rules should continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The amendment to §97.3(a)(2)(A) adds *"Candida auris"* and "tick-borne relapsing fever" to the notifiable conditions list, and removes "multidrug-resistant *Acinetobacter* (MDR-A)." The amendment removes "invasive Group A Streptococcus," and "invasive Group B Streptococcus" and updates the term "streptococcal disease: invasive group A, invasive group B, or invasive *Streptococcus pneumoniae"* to *"Streptococcus pneumoniae,* invasive." The amendment removes "amebiasis" from the list of notifiable conditions (amebic meningitis and encephalitis will remain).

The amendment to §97.3(a)(3)(D) spells out "tuberculosis" for consistency.

The amendment to §97.3(a)(3)(F), §97.3(a)(3)(I), and §97.3(a)(5) adds "or practitioner" for consistency to be more inclusive of reporting entities.

The amendment to §97.3(a)(4) adds *"Candida auris"* to the list of diseases requiring submission of cultures.

The amendment to §97.4(a)(2) removes "multidrug resistant *Acinetobacter* (MDR-A) species" and adds "syphilis infection in pregnant females" and *"Candida auris"* to the list of notifiable conditions that shall be reported within one working day of identification as a suspected case.

The amendment to §97.4(a)(5)(B) adds the word "Texas" to "Health and Safety Code" to clarify and standardize the reference to the statute.

FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the sections will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of DSHS employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to DSHS;

(5) the proposed rules will not create new rules;

(6) the proposed rules will not expand, limit, or repeal existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Donna Sheppard has also determined that there will not be an adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; and the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Ms. Imelda Garcia, Associate Commissioner, Laboratory and Infectious Disease Services Division, has determined that for each year of the first five years that the rules are in effect, the public benefit will impact the people of Texas whose risk of illness is decreased by the early detection and control or prevention of infectious diseases in the community.

Donna Sheppard has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

REGULATORY ANALYSIS

DSHS has determined that this proposal is not a "major environmental rule" as defined by Texas 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

DSHS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted.

STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Health and Safety Code, §81.004, which authorizes rules necessary for the effective administration of the Communicable Disease Prevention and Control Act; and §81.041, which requires a rule to prescribe criteria that constitute exposure to reportable diseases; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by the health and human services system, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters within DSHS jurisdiction. Review of the sections implements Texas Government Code, §2001.039.

The amendments will implement Texas Health and Safety Code, Chapters 81 and 1001; and Texas Government Code, Chapter 531.

§97.3. What Condition to Report and What Isolates to Report or Submit.

(a) Humans.

(1) Identification of notifiable conditions.

(A) A summary list of notifiable conditions and reporting time frames is published on the Department of State Health Services web site at http://www.dshs.state.tx.us/idcu/investigation/conditions/. Copies are filed in the Emerging and Acute Infectious Disease Branch, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(B) Repetitive test results from the same patient do not need to be reported except those for mycobacterial infections.

(2) Notifiable conditions or isolates.

(A) Confirmed and suspected human cases of the following diseases/infections are reportable: acquired immune deficiency syndrome (AIDS); [~~amebiasis;~~] amebic meningitis and encephalitis; anaplasmosis; ancylostomiasis; anthrax; arboviral infections including, but not limited to, those caused by California serogroup virus, chikungunya virus, dengue virus, Eastern equine encephalitis (EEE) virus, St. Louis encephalitis (SLE) virus, Western equine encephalitis (WEE) virus, yellow fever virus, West Nile (WN) virus, and Zika virus; ascariasis; babesiosis; botulism, adult and infant; brucellosis; campylobacteriosis; *Candida auris;* carbapenem resistant *Enterobacteriaceae* (CRE); Chagas disease; chancroid; chickenpox (varicella); *Chlamydia trachomatis* infection; cryptosporidiosis; cyclosporiasis; diphtheria; echinococcosis; ehrlichiosis; fasciliasis; gonorrhea; *Haemophilus influenzae,* invasive; Hansen's disease (leprosy); hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis A, acute hepatitis B infection, hepatitis B acquired perinatally (child), any hepatitis B infection identified prenatally or at delivery (mother), acute hepatitis C infection, and acute hepatitis E infection; human immunodeficiency virus (HIV) infection; influenza-associated pediatric mortality; legionellosis; leishmaniasis; listeriosis; Lyme disease; malaria; measles (rubeola); meningococcal infection, invasive; [~~multidrug-resistant~~ ~~*Acinetobacter*~~ ~~(MDR-A);~~] mumps; novel

coronavirus; novel influenza; paragonimiasis; pertussis; plague; poliomyelitis, acute paralytic; poliovirus infection, non-paralytic; prion diseases, such as Creutzfeldt-Jakob disease (CJD); Q fever; rabies; rubella (including congenital); salmonellosis, including typhoid fever; Shiga toxin-producing *Escherichia coli* infection; shigellosis; smallpox; spotted fever group rickettsioses (such as Rocky Mountain spotted fever); streptococcal disease: [~~invasive group A,~~ ~~invasive group B,~~ ~~or invasive~~] *Streptococcus pneumoniae*, invasive; syphilis; *Taenia solium* and undifferentiated *Taenia* infections, including cysticercosis; tetanus; tick-borne relapsing fever; trichinosis; trichuriasis; tuberculosis *(Mycobacterium tuberculosis* complex); tuberculosis infection; tularemia; typhus; vancomycin-intermediate *Staphylococcus aureus* (VISA); vancomycin-resistant *Staphylococcus aureus* (VRSA); *Vibrio* infection, including cholera (specify species); viral hemorrhagic fever; and yersiniosis.

(B) In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern should be reported by the most expeditious means.

(3) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(A) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with Subchapter F of this chapter (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV));

(B) for tuberculosis disease - complete name, date of birth, physical address and county of residence, country of origin, information on which diagnosis was based or suspected. In addition, if known, radiographic or diagnostic imaging results and date(s); all information necessary to complete the most recent versions of department reporting forms: Report of Case and Patient Services, Report of Follow-up and Treatment for Contacts to TB Cases and Suspects; and Report of Verified Case of Tuberculosis; laboratory results used to guide prescribing, monitoring or modifying antibiotic treatment regimens for tuberculosis to include, but not limited to, liver function studies, renal function studies, and serum drug levels; pathology reports related to diagnostic evaluations of tuberculosis; reports of imaging or radiographic studies; records of hospital or outpatient care to include, but not limited to, histories and physical examinations, discharge summaries and progress notes; records of medication administration to include, but not limited to, directly observed therapy (DOT) records, and drug toxicity and monitoring records; a listing of other patient medications to evaluate the potential for drug-drug interactions; and copies of court documents related to court ordered management of tuberculosis.

(C) for contacts to a known case of tuberculosis - complete name; date of birth; physical address; county of residence; evaluation and disposition; and all information necessary to complete the most recent versions of department reporting forms: Report of Follow-up and Treatment for Contacts to TB Cases and Suspects; and Report of Case and Patient Services;

(D) for other persons identified with tuberculosis [~~TB~~] infection - complete name; date of birth; physical address and county of residence; country of origin; diagnostic information; treatment information; medical and population risks; and all information necessary to complete the most recent versions of department reporting form: Report of Case and Patient Services.

(E) for hepatitis B (chronic and acute) identified prenatally or at delivery - mother's name, address, telephone number, age, date of birth, sex, race and ethnicity, preferred language, hepatitis B laboratory test results; estimated delivery date or date and time of birth; name and phone number of delivery hospital or planned delivery hospital; name of infant; name, phone number, and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant;

(F) for hepatitis A, B, C, and E - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, including all positive and negative hepatitis panel results, liver function tests, and symptoms), date of onset, pregnancy status, and physician or practitioner name, address, and telephone number;

(G) for hepatitis B, perinatal infection - name of infant; date of birth; sex; race; ethnicity; name, phone number and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant, hepatitis B laboratory test results;

(H) for chickenpox - name, date of birth, sex, race and ethnicity, address, date of onset, and varicella vaccination history;

(I) for Hansen's disease - name; date of birth; sex; race and ethnicity; disease type; place of birth; address; telephone number; date entered Texas; date entered U.S.; education/employment; insurance status; location and inclusive dates of residence outside U.S.; date of onset and history prior to diagnosis; date of initial biopsy and result; disease type i.e., tuberculoid, borderline and lepromatous; date initial drugs prescribed and name of drugs; name, date of birth and relationship of household contacts; and name, address, and telephone number of physician or practitioner;

(J) for novel influenza investigations occurring during an influenza pandemic--minimal reportable information on individual cases, a subset of cases or aggregate data will be specified by the department;

(K) for all other notifiable conditions listed in paragraph (2)(A) of this subsection - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, specimen source, test type, and clinical indicators), date of onset, and physician or practitioner name, address, and telephone number; and

(L) other information may be required as part of an investigation in accordance with Texas Health and Safety Code, §81.061.

(4) Diseases requiring submission of cultures. For all anthrax *(Bacillus anthracis);* botulism, adult and infant *(Clostridium botulinum);* brucellosis *(Brucella* species); *Candida auris;* diphtheria *(Corynebacteria diphtheria* from any site); all *Haemophilus influenzae,* invasive, in children under five years old *(Haemophilus influenzae* from normally sterile sites); listeriosis *(Listeria monocytogenes);* meningococcal infection, invasive *(Neisseria meningitidis* from normally sterile sites or purpuric lesions); plague *(Yersinia pestis);* salmonellosis, including typhoid fever (*Salmonella* species); Shiga toxin-producing *Escherichia coli* infection (*E.coli* O157:H7, isolates or specimens from cases where Shiga toxin activity is demonstrated); *Staphylococcus aureus* with a vancomycin MIC greater than 2 Âµg/mL; all *Streptococcus pneumoniae,* invasive, in children under five years old *(Streptococcus pneumoniae* from normally sterile sites); tuberculosis *(Mycobacterium tuberculosis* complex); tularemia *(Francisella tularensis);* and vibriosis *(Vibrio* species) - pure cultures (or specimens as indicated in this paragraph) shall be submitted accompanied by a current department Specimen Submission Form.

(5) Laboratory reports. Reports from laboratories shall include patient name, identification number, address, telephone number,

age, date of birth, sex, race and ethnicity; specimen submitter name, address, and phone number; specimen type; date specimen collected; disease test and test result; normal test range; date of test report; and physician or practitioner name and telephone number.

(b) Animals.

(1) Clinically diagnosed or laboratory-confirmed animal cases of the following diseases are reportable: anthrax, arboviral encephalitis, tuberculosis *(Mycobacterium tuberculosis* complex) in animals other than those housed in research facilities, and plague. Also, all non-negative rabies tests performed on animals from Texas at laboratories located outside of Texas shall be reported; all non-negative rabies tests performed in Texas will be reported by the laboratory conducting the testing. In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means.

(2) The minimal information that shall be reported for each disease includes species and number of animals affected, disease or condition, name and phone number of the veterinarian or other person in attendance, and the animal(s) owner's name, address, and phone number. Other information may be required as part of an investigation in accordance with Texas Health and Safety Code, §81.061.

§97.4. When and How to Report a Condition or Isolate.

(a) Humans.

(1) The following notifiable conditions are public health emergencies and suspect cases shall be reported immediately by phone to the local health authority or the appropriate Department of State Health Services regional epidemiology office: anthrax; botulism; diphtheria; measles (rubeola); meningococcal infection, invasive; novel coronavirus; novel influenza; poliomyelitis, acute paralytic; plague; rabies; smallpox; tularemia; vancomycin-intermediate *Staphylococcus aureus* (VISA); vancomycin-resistant *Staphylococcus aureus* (VRSA); viral hemorrhagic fever; yellow fever; and any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern.

(2) The following notifiable conditions shall be reported by fax or phone within one working day of identification as a suspected case: brucellosis; *Candida auris;* carbapenem resistant *Enterobacteriaceae* (CRE); hepatitis A, acute; hepatitis B, perinatal infection; influenza-associated pediatric mortality; [~~multidrug-resistant *Acinetobacter* (MDR-A) species;~~] mumps; pertussis; poliovirus infection, non-paralytic; Q fever; rubella (including congenital); syphilis infection in pregnant females; tuberculosis *(Mycobacterium tuberculosis* complex); and *Vibrio* infection (including cholera).

(3) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with Subchapter F of this chapter (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).

(4) Tuberculosis antibiotic susceptibility results should be reported by laboratories no later than one week after they first become available.

(5) For all other notifiable conditions not listed in paragraphs (1) - (4) of this subsection, reports of disease shall be made no later than one week after a case or suspected case is identified.

(A) Transmittal may be by telephone, fax, mail, courier, or electronic transmission.

(i) If by mail or courier, the reports shall be on a form provided by the department and placed in a sealed envelope addressed to the attention of the appropriate receiving source and marked "Confidential."

(ii) Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmittal, be by express written agreement with the receiving agency, utilize a format prescribed by the receiving agency, and be validated as accurate.

(B) A health information exchange (HIE) organization as defined by Texas Health and Safety Code, §182.151, may transmit reports on behalf of providers required to report in §97.2(a) - (d) of this title (relating to Who Shall Report) in accordance with Texas Health and Safety Code, Chapter 182, Subchapter D. Health Information Exchanges, and all other state and federal law as follows:

(i) The receiving agency has published message standards.

(ii) A method of secure transmission has been established between the HIE and the receiving agency and transmissions have been tested with the receiving agency and established as meeting the data exchange standards and conveying information accurately.

(iii) Reporting by the HIE has been requested and authorized by the appropriate health care provider, practitioner, physician, facility, clinical laboratory, or other person who is required to report health-related information.

(iv) HIE reports may be made in addition to but shall not replace reports listed in paragraphs (1) - (2) of this subsection.

(6) All diseases requiring submission of cultures in §97.3(a)(4) of this title (relating to What Condition to Report and What Isolates to Report or Submit) shall be submitted as they become available.

(b) Animals. Reportable conditions affecting animals shall be reported within one working day following the diagnosis.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 28, 2020.

TRD-202003568
Barbara L. Klein
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 776-7729

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER B. NATURAL GAS

34 TAC §3.27

The Comptroller of Public Accounts proposes amendments to §3.27 concerning exemption of certain interest owners from gas occupation taxes. The amendments implement Senate Bill 533, 86th Legislature, 2019, effective September 1, 2019,

which amends Tax Code, §202.056 (Exemption for Oil and Gas from Wells Previously Inactive), relating to the severance tax exemption for oil and gas production from certain inactive oil wells. The comptroller also proposes changing the name of the section to "Exemptions of Governmental Entities and Two-Year Inactive Oil Wells" to better reflect the content of the section.

Despite the fact that this rule is in the Natural Gas subchapter, it includes an exemption for casinghead gas produced from two-year inactive oil wells. The comptroller adds new subsection (a), providing definitions of "casinghead gas," "commission," "condensate," and "hydrocarbons," using the definitions of these terms found in Tax Code, Chapter 201 (Gas Production Tax) and Chapter 202 (Oil Production Tax). The comptroller adds a definition for the term "two-year inactive well," deriving the language for this term from Tax Code, §202.056(a)(4). The proposed language provides that the definition of two-year inactive well applies to an oil well certified on or after September 1, 2019.

The comptroller reletters subsection (a) as subsection (b) and amends the subsection to add a title, to recognize that governmental entities are not subject to the gas occupation tax, and to delete the language relating to mineral ownership since the state of Texas cannot tax the federal government or itself, whether they are the mineral owners or not.

The comptroller deletes original subsection (b) and adds language based on that subsection to new subsection (c) to better address tax imposed on nonexempt parties.

The comptroller adds new subsection (c) to include a title and the language of Tax Code, §201.205 (Tax Borne Ratably), which provides that the tax shall be borne ratably by all "interested parties," which are determined "without regard to title to the oil either before or after severance; and without regard to any arbitrary classification or nomenclature." *See Sheppard v. Stanolind Oil & Gas Co.*, 125 S.W.2d 643, 648 (Tex. Civ. App. - Austin 1939, writ ref'd). The comptroller deletes the example and graphic since they apply to mineral ownership information removed from this section. The comptroller removes original subsection (c) and the graphic to improve the readability of the subsection.

The comptroller adds new subsection (d), which provides information regarding two-year inactive oil wells, including the comptroller's approval process for the exemption for a two-year inactive oil well in paragraph (1). New subsection (d) is derived from Tax Code, §202.056. Tax Code Chapter 202 applies to oil wells and oil wells do not produce condensate. Since oil wells do not produce condensate, condensate does not qualify for the exemption for a two-year inactive oil well. The comptroller adds new paragraph (2) which provides that casinghead gas produced from a certified two-year inactive oil well is exempt from the natural gas tax; the beginning date and duration of the exemption in paragraph (3); and the process to receive a tax credit for payments made at the full rate under the Tax Code in paragraph (4).

In new subsection (e), the comptroller provides information regarding recompleted certified two-year inactive oil wells, including the duration of the exemption and the application process for the exemption.

The comptroller adds new subsection (f), which explains that the exemption for a two-year inactive oil well does not extend to the oil-field regulatory cleanup fee. The oil-field regulatory cleanup fee is due on casinghead gas sold, even if that gas is otherwise exempt under subsection (d).

The comptroller adds new subsection (g), which outlines penalties regarding two-year inactive oil wells.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amended rule would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2 (State Taxation), and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Tax Code, §202.056 (Exemption for Oil and Gas from Wells Previously Inactive).

§3.27. Exemptions of Governmental Entities and Two-Year Inactive Oil Wells. [~~Exemption of Certain Interest Owners from Gas Occupation Taxes.~~]

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Casinghead gas--Gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

(2) Commission--The Railroad Commission of Texas.

(3) Condensate--Liquid hydrocarbon that is or can be recovered from gas by a separator but does not include liquid hydrocarbon recovered from gas by refrigeration or absorption and separated by a fractionating process.

(4) Hydrocarbons--Any oil or gas produced from a well, including hydrocarbon production.

(5) Two-year inactive well--A well that has not produced oil or gas in more than one month in the two years preceding the date of application for severance tax exemption. The term only includes a well certified by the commission on or after September 1, 2019, and does not include a well that is:

(A) part of an enhanced oil recovery project, as defined by Natural Resources Code, §89.002 (Definitions); or

(B) drilled but not completed and that does not have a record of hydrocarbon production reported to the commission.

(b) [~~(a)~~] Exemption of certain entities. The [~~Mineral and/or royalty interests owned by the~~] federal government and its subdivisions and the State of Texas and its subdivisions are not subject to the gas occupation tax.

(1) Subdivisions of the federal government include, but are not limited to, the following:

(A) the Federal Land Bank;

(B) the Department of the Interior;

(C) the Bureau of Land Management; and

(D) the Army Corps of Engineers.

(2) Subdivisions of the State of Texas include, but are not limited to, the following:

(A) Texas cities, towns, and villages;

(B) Texas counties;

(C) Texas independent and common school districts; and

(D) Texas public colleges and universities.

(c) Tax borne ratably. The natural gas tax shall be borne ratably by all nonexempt interested parties in proportion to their interests.

(d) Two-year inactive oil well.

(1) To apply for the exemption for a two-year inactive oil well, taxpayers must submit to the comptroller a copy of the approved certification letter provided by the commission and a completed Texas Well Exemption Application (form AP-217), or any successor to that form promulgated by the comptroller.

(2) Casinghead gas produced from a certified two-year inactive oil well is not subject to the natural gas tax. Since oil wells do not produce condensate, condensate does not qualify for the exemption for a two-year inactive oil well.

(3) The exemption extends for five years beginning with the month following the date certified by the commission.

(4) If the tax is paid at the full rate provided by Tax Code, §201.052(a) (Rate of Tax) before the comptroller approves an application for an exemption provided for in this subsection (d) of this section, the operator is entitled to a credit against taxes imposed by Tax Code, §201.052 in an amount equal to the tax paid. To receive a credit, the operator must apply to the comptroller for the credit before the expiration of the applicable period for filing a tax refund claim under Tax Code, §111.104 (Refunds).

(e) Recompleted two-year inactive oil well. A two-year inactive oil well that is subsequently recompleted shall only receive the five-year exemption from the initial certification of the well. A taxpayer must file another Texas Well Exemption Application (form AP-217), or any successor to that form promulgated by the comptroller, for the recompleted oil well identifying the original commission lease number when that well meets the requirements:

(1) the commission certifies the recompleted two-year inactive oil well;

(2) the commission assigns a new lease number for the recompleted oil well; and

(3) the American Petroleum Institute number for the well does not change.

(f) Oil-Field cleanup regulatory fee. Gas exempt under subsection (d) of this section is not exempt from the oil-field cleanup regulatory fee, which is due on casinghead gas sold.

(g) Penalty. On notice from the commission that the certification for a two-year inactive well has been revoked, the tax exemption shall not apply to oil or gas production sold after the date of notification. A person who claims the exemption is liable to the state for a civil penalty if the person applies or attempts to apply the tax exemption allowed by subsection (d) of this section after the certification for a two-year inactive well is revoked. The amount of the penalty may not exceed the sum of:

(1) $10,000; or

(2) the difference between the amount of taxes paid or attempted to be paid and the amount of taxes due.

[~~(b) The tax on production from properties with an ownership interest exempt from tax, such as state royalty, shall be due from the nonexempt interest owners in the same proportion that the nonexempt owners share the net proceeds (wellhead value) from the sale of the production.~~]

[~~(c) For example, 10,000 MMBTU (million British thermal units) are sold for $2.00 per MMBTU or $20,000 gross proceeds. There is a state royalty interest (exempt from tax) paid on gross proceeds and the working interest (not exempt from tax) has incurred $5,000 transportation and processing fee.~~]
[~~Figure: 34 TAC §3.27(c)~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2020.

TRD-202003564
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 475-2220

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PART 6. TEXAS MUNICIPAL RETIREMENT SYSTEM

CHAPTER 123. ACTUARIAL TABLES AND BENEFIT REQUIREMENTS

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS" or the "System") proposes the repeal of current 34 TAC Chapter 123 ("Chapter 123"), relating to actuarial tables and benefit requirements. TMRS is also proposing to replace current Chapter 123 with proposed new Chapter 123, also relating to actuarial tables and benefit requirements.

REPEAL OF CURRENT CHAPTER 123

TMRS proposes the repeal of current 34 TAC Chapter 123, which includes the following sections: 34 TAC §123.1, Actuarial Tables; 34 TAC §123.2, Supplemental Disability Benefits Not Reduced by Certain Increases in Base Benefit; 34 TAC §123.3, Month of Credited Service and Year of Credited Service Defined; 34 TAC §123.4, Interest in Calculations of Benefits Based on Completed Service; 34 TAC §123.5, Requirement of Spousal

Consent; 34 TAC §123.6, Retirement Benefit Calculation; 34 TAC §123.7, Authority to Make Actuarial Changes; 34 TAC §123.8, Updated Service Credit Calculations.

PROPOSAL OF NEW CHAPTER 123

As proposed, the new Chapter 123 will address: 34 TAC §123.1, Definitions; 34 TAC §123.2, Bona Fide Termination of Employment; 34 TAC §123.3, Return to Work; 34 TAC §123.4, Month of Credited Service and Year of Credited Service Defined; 34 TAC §123.5, Restricted Prior Service Credit; 34 TAC §123.6, Updated Service Credit Calculations; 34 TAC §123.7, Requirement of Spousal Consent; 34 TAC §123.8, Effect of Divorce; 34 TAC §123.9, Post-Retirement Contributions; 34 TAC §123.10, Payments Due on Death of Retiree or Annuitant; 34 TAC §123.11, Supplemental Disability Benefits Not Reduced by Certain Increases in Base Benefit; 34 TAC §123.12, Affidavits of Heirship for Determination of Payments Due Heirs; 34 TAC §123.13, Beneficiary Causing Death of Member or Annuitant; 34 TAC §123.14, Certain Convicted Elected Officials Ineligible for Retirement Annuity; 34 TAC §123.15, Calculation of Member Supplemental Death Benefits; 34 TAC §123.16, Retiree Supplemental Death Benefit; 34 TAC §123.17, Actuarial Tables; 34 TAC §123.18, Authority to Make Actuarial Changes.

BACKGROUND AND PURPOSE

TMRS proposes to repeal and replace Chapter 123 to provide clarification relating to the actuarial tables and benefit requirements under existing benefit plans of TMRS, and to implement and administer certain provisions of the TMRS Act, including Senate Bill 1337 ("SB 1337") which was enacted by the 86th Legislature, and Texas Government Code §810.003 relating to Certain Elected Officials Ineligible for Retirement Annuity. Statutes specific to TMRS are found in Title 8, Subtitle G, Chapters 851 through 855, Texas Government Code (the "TMRS Act"). In addition, the repeal and replacement of Chapter 123 is being proposed as a result of TMRS' rule review, which was conducted pursuant to Texas Government Code §2001.039.

Three of the provisions of proposed new Chapter 123 rules (in new §123.17 - Actuarial Tables, §123.11 - Supplemental Disability Benefits Not Reduced by Certain Increases in Base Benefit, and §123.6 - Updated Service Credit Calculations) are unchanged from existing rules (currently found in §§123.1, 123.2, and 123.8, respectively) and several of the proposed new rules are substantially similar to the provisions of the existing Chapter 123, which is proposed to be repealed. There are, however, some substantive changes in the proposed new rules, which are described as follows: (i) addition of definitions for "compensation," "department" and "spouse" (in §123.1); and (ii) substantive clarifications or modernizations to: clarify the requirements of bona fide termination of employment for the payment of benefits and describe consequences in the absence of a bona fide termination (in §123.2); clarify various provisions regarding return to work by a retiree, including the suspension of an annuity in certain circumstances (in §123.3); amend the current service credit rule to clarify that service credit will not be granted after termination of employment, unless reemployed by a participating municipality (in §123.4); clarify that restricted prior service credit is used when calculating vesting status of a member and allow the use of a United States Department of Defense certificate or TMRS records of previously refunded service credit to verify service in connection with applications for restricted prior service credit (in §123.5); clarify when spousal consent is not required, allow reliance on certification of marital status by a member or retiree, and modernize certain exceptions to spousal consent (in §123.7); clarify the effect of divorce with respect to TMRS participants and beneficiary designations (in §123.8); clarify how post-retirement contributions will be handled (in §123.9); clarify who is paid amounts due a deceased retiree or annuitant (in §123.10); allow the use of affidavits for the determination of heirs of a deceased retiree, deceased non-vested member and in various other circumstances and specify the requirements for such affidavits (in §123.12); clarify matters regarding when the System may pay and may not pay benefits where a member's or retiree's death was caused by another person (in §123.13); and clarify how supplemental death benefits are calculated or payable for certain circumstances (in §123.15 and §123.16).

Additionally, because provisions in SB 1337 codified into the TMRS Act certain provisions regarding the Board's authority to make actuarial changes that are set forth in current rule §123.7, the proposed new rule §123.18, regarding authority to make actuarial changes, repeals several subsections that are no longer necessary. Further, new rule §123.14 is proposed pursuant to the authority granted to the Board by Section 810.003(j) of the Texas Government Code relating to Certain Elected Officials Ineligible for Retirement Annuity.

Current rules §123.4, Interest in Calculations of Benefits Based on Completed Service, and §123.6, Retirement Benefit Calculation, are being repealed and not replaced as they are no longer necessary for the administration of the System. New Chapter 123 will reorder and renumber the rules in similar order to the related statutes governing the System.

At Board meetings on May 28, 2020, and June 25, 2020, the TMRS Board approved the publication for comment of the proposed repeal of current Chapter 123 and the proposed replacement of current Chapter 123 with the new Chapter 123 rules.

FISCAL NOTE

Christine Sweeney, General Counsel of TMRS, has determined that for the first five-year period the proposed new rules are in effect there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed rules.

PUBLIC COST/BENEFIT

Ms. Sweeney also has determined that for each year of the first five years the proposed new rules are in effect, the public benefit of Chapter 123 will be: (i) a clearer and more accurate statement of the administrative rules of TMRS regarding actuarial tables and benefit requirements of TMRS for members of the System and other interested parties; and, (ii) to conform administrative rules with the System's interpretation and administration of the TMRS Act provisions, including new statutory requirements adopted in SB 1377, and with the provisions of Texas Government Code §810.003.

LOCAL EMPLOYMENT IMPACT STATEMENT

TMRS has determined that there will be no adverse economic effects on local economies or local employment because of the proposed new rules, which are proposed for clarification and implementation of provisions relating to the actuarial tables and benefit requirements of the TMRS Act under existing benefit plans of TMRS. Therefore, no local employment impact statement is required under Texas Government Code §2001.022.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TMRS has determined that there will be no adverse economic effects on small businesses, micro-businesses, or rural communities because the proposed new rules are proposed for clarification and implementation of provisions relating to the actuarial tables and benefit requirements of the TMRS Act under existing benefit plans of TMRS, and for the implementation of Texas Government Code §810.003. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Texas Government Code §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

TMRS has determined that for each year of the first five years the proposed new rules are in effect, the proposed rules: will not create or eliminate any TMRS programs; will not require either the creation of or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TMRS (TMRS does not receive any legislative appropriations); will not require an increase or decrease in fees paid to TMRS; will not create a new regulation (because new Chapter 123 updates and replaces existing Chapter 123); does not expand, limit or repeal an existing regulation (because new Chapter 123 updates and replaces existing Chapter 123); does not increase or decrease the number of individuals subject to the rules' applicability; and, does not affect this state's economy.

TAKINGS IMPACT ASSESSMENT

TMRS has determined that there are no private real property interests affected by the proposed new rules, therefore a takings impact assessment is not required under Texas Government Code §2007.043.

COSTS TO REGULATED PERSONS

TMRS has determined that Texas Government Code §2001.0045(b) does not apply to the proposed new rules because they do not impose a cost on regulated persons (including another state agency, a special district, or a local government). Also, some of the proposed new rules are necessary to implement recent legislation (SB 1337) and Texas Government Code §810.003.

ENVIRONMENTAL RULE ANALYSIS

The proposed new rules are not a "major environmental rule" as defined by Texas Government Code §2001.0225. The proposed rules are not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

COMMENTS

Comments on the proposed rules may be submitted to Christine Sweeney, General Counsel, TMRS, P.O. Box 149153, Austin, Texas 78714--9153, faxed to (512) 225-3786, or submitted electronically to csweeney@tmrs.com. Written comments must be received by TMRS no later than 30 days after publication of this notice in the *Texas Register.*

34 TAC §§123.1 - 123.8

STATUTORY AUTHORITY

The repeal of existing Chapter 123 is proposed and implements the authority granted under the following provisions of the TMRS Act or the Texas Government Code: (i) Government Code §804.051, which allows the Board to adopt rules to require spousal consent for the selection of any retirement or death benefit other than a benefit payable to the spouse as beneficiary on death of the member or retiree; (ii) Government Code §810.003, which requires the Board to adopt rules and procedures to implement the ineligibility of an elected official convicted of a qualifying felony to receive a service retirement annuity from a public retirement system as set forth in the statute; (iii) Government Code §853.004, which allows the Board to adopt rules necessary or desirable to implement TMRS Act Chapter 853, Creditable Service; (iv) Government Code §854.003, which allows the Board to adopt rules necessary to comply with distributions requirements required for a qualified plan set forth in the Internal Revenue Code; (v) Government Code §854.603, which allows the Board to adopt rules to require proof of compensation and periods of employment for purposes of certain member supplemental death benefits; (vi) Government Code §855.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System; and (vii) Government Code §855.110, which allows the Board to adopt rules and policies relating to certain actuarial matters. In addition, the rule changes are proposed as a result of TMRS' rule review, which was conducted pursuant to Texas Government Code §2001.039.

CROSS-REFERENCE TO STATUTES

The proposal implements the following sections of the Texas Government Code: §804.051, concerning requirements for spousal consent; §810.003, concerning certain elected officials ineligible to receive a service retirement annuity; §851.001, concerning definitions; §852.103, concerning the withdrawal of contributions after termination of employment; §852.104, concerning termination of membership in TMRS; §852.108, concerning resumption of service with same employer by a retiree; §852.109, concerning resumption of employment with different employer by a retiree; §853.001, concerning creditable service; §853.305, concerning restricted prior service credit; §§853.401 - 853.404, concerning the determination and calculation of updated service credit; §854.002, concerning the composition of a retirement annuity; §854.003, concerning retirement and payment of benefits after termination of employment with all TMRS participating municipalities; §854.004, concerning the payment of amounts due a deceased retiree or annuitant; §854.006, §854.501, and §855.603, concerning the payment of benefits to a decedent's beneficiaries or estate, and requirements of an affidavit for the determination of heirs; §854.104, concerning optional service retirement annuities; §854.203, concerning the lack of effect of cost of living increases on supplemental disability benefits; §854.504, concerning a person causing the death of a member or annuitant; §854.603, concerning the calculation of supplemental death benefits for active members; §854.604 and §854.605, concerning the calculation and administration of supplemental death benefits for retirees; §855.110, concerning adopting actuarial rates and tables, setting amortization periods, and laddering the amortization of unfunded actuarial accrued liabilities; §855.402, concerning the collection and crediting of member contributions; and §855.407, concerning the impact of certain actuarial changes on a municipality's contribution rates.

§123.1. Actuarial Tables.
§123.2. Supplemental Disability Benefits Not Reduced by Certain Increases in Base Benefit.
§123.3. Month of Credited Service and Year of Credited Service Defined.
§123.4. Interest in Calculations of Benefits Based on Completed Service.
§123.5. Requirement of Spousal Consent.
§123.6. Retirement Benefit Calculation.
§123.7. Authority to Make Actuarial Changes.

§123.8. Updated Service Credit Calculations.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2020.

TRD-202003565
Christine M. Sweeney
General Counsel
Texas Municipal Retirement System
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 225-3710

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34 TAC §§123.1 - 123.18

STATUTORY AUTHORITY

The new Chapter 123 rules are proposed and implement the authority granted under the following provisions of the TMRS Act or the Texas Government Code: (i) Government Code §804.051, which allows the Board to adopt rules to require spousal consent for the selection of any retirement or death benefit other than a benefit payable to the spouse as beneficiary on death of the member or retiree; (ii) Government Code §810.003, which requires the Board to adopt rules and procedures to implement the ineligibility of an elected official convicted of a qualifying felony to receive a service retirement annuity from a public retirement system as set forth in the statute; (iii) Government Code §853.004, which allows the Board to adopt rules necessary or desirable to implement TMRS Act Chapter 853, Creditable Service; (iv) Government Code §854.003, which allows the Board to adopt rules necessary to comply with distributions requirements required for a qualified plan set forth in the Internal Revenue Code; (v) Government Code §854.603, which allows the Board to adopt rules to require proof of compensation and periods of employment for purposes of certain member supplemental death benefits; (vi) Government Code §855.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System; and (vii) Government Code §855.110, which allows the Board to adopt rules and policies relating to certain actuarial matters. In addition, the rule changes are proposed as a result of TMRS' rule review, which was conducted pursuant to Texas Government Code §2001.039.

CROSS-REFERENCE TO STATUTES

The proposal implements the following sections of the Texas Government Code: §804.051, concerning requirements for spousal consent; §810.003, concerning certain elected officials ineligible to receive a service retirement annuity; §851.001, concerning definitions; §852.103, concerning the withdrawal of contributions after termination of employment; §852.104, concerning termination of membership in TMRS; §852.108, concerning resumption of service with same employer by a retiree; §852.109, concerning resumption of employment with different employer by a retiree; §853.001, concerning creditable service; §853.305, concerning restricted prior service credit; §§853.401 - 853.404, concerning the determination and calculation of updated service credit; §854.002, concerning the composition of a retirement annuity; §854.003, concerning retirement and payment of benefits after termination of employment with all TMRS participating municipalities; §854.004, concerning the payment of amounts due a deceased retiree or annuitant; §854.006, §854.501, and §855.603, concerning the payment of benefits to a decedent's beneficiaries or estate, and requirements of an affidavit for the determination of heirs; §854.104, concerning optional service retirement annuities; §854.203, concerning the lack of effect of cost of living increases on supplemental disability benefits; §854.504, concerning a person causing the death of a member or annuitant; §854.603, concerning the calculation of supplemental death benefits for active members; §854.604 and §854.605, concerning the calculation and administration of supplemental death benefits for retirees; §855.110, concerning adopting actuarial rates and tables, setting amortization periods, and laddering the amortization of unfunded actuarial accrued liabilities; §855.402, concerning the collection and crediting of member contributions; and §855.407, concerning the impact of certain actuarial changes on a municipality's contribution rates.

§123.1. Definitions.

(a) Compensation.

(1) Section 851.001(6) of the Act provides the definition of compensation for purposes of the Act. For avoidance of doubt, the definition of compensation includes, but is not limited to, the following additional types of compensation in this paragraph and compensation described in paragraph (2) of this subsection subject to the limitations therein, and excludes compensation described in paragraph (3) of this subsection:

(A) base pay and additional compensation paid for additional duties, longevity, overtime or special duties;

(B) vacation and sick leave pay;

(C) monetary and nonmonetary compensation (the value of which is determined by the participating municipality) taxable as income, including but not limited to, car or uniform allowances and imputed income from fringe benefits;

(D) severance payments; and

(E) workers' compensation paid as temporary wage replacement and reported or verified to the municipality.

(2) Compensation is limited to payments made to an employee for performance of personal services and made before or within a reasonable time, as determined by the system in its sole discretion, after bona fide termination of the employee.

(3) Compensation does not include short-term or long-term disability insurance payments received by an employee.

(b) Department.

(1) Definition of "department" may include:

(A) an economic development corporation established by a participating municipality pursuant to the Development Corporation Act (Subtitle C1, Title 12, Local Government Code), for which corporation the municipality's governing body has passed an ordinance pursuant to §501.067(a)(2), Local Government Code; or

(B) a recognized division that is an instrumentality of a participating municipality:

(i) that is created to carry out a municipal function (for example, public park creation and maintenance, economic stimulus and development, or administration of port facilities);

(ii) that is controlled by the municipality:

(I) by the municipality maintaining the ability to appoint and remove the members of the governing body for the instrumentality; and

(II) by the municipality retaining the ability to dissolve the instrumentality; and

(iii) for which the assets of the instrumentality revert to the municipality upon the dissolution of the instrumentality.

(2) Notwithstanding the foregoing, the determination of whether or not any economic development corporation, instrumentality, or other recognized division is or is not a department for purposes of the Act shall be made by the system, in its sole discretion.

(3) An employee of a participating department who performs services for a nonparticipating entity pursuant to an agreement duly authorized by the participating municipality that governs the department remains a member of the system.

(c) Spouse. A spouse does not include a person separated from the participant under a decree of divorce or annulment.

§123.2. Bona Fide Termination of Employment.

(a) The Act provides that retirement benefits commence upon retirement, and §851.001(11) of the Act provides that retirement requires a "withdrawal from service". The Internal Revenue Code and regulations thereunder require that the terms of the plan be followed and define termination of employment for the similar rule that under a pension plan, such as TMRS, benefits cannot commence prior to the earlier of termination of employment or normal retirement age (if the plan allows in-service distributions prior to normal retirement age, which the Act does not). In order to satisfy applicable requirements of the Act and the Internal Revenue Code and guidance thereunder, for purposes of allowing a distribution of benefits to a member, a member must have a bona fide termination of employment with all applicable participating municipalities. A distribution of benefits to a member before there has been such a bona fide termination of employment would be an in-service distribution and an operational error which could lead to a plan disqualification under the Internal Revenue Code and could result in the assessment of taxes, back taxes, interest and penalties against the participating municipality or municipalities and its participants unless corrected.

(b) Whether a termination of employment is a bona fide termination is dependent on the facts and circumstances surrounding the termination.

(c) With respect to employees of a participating municipality, a termination is not a bona fide termination of employment if there has not been a complete termination and severance of the employer-employee relationship. Failure to strictly follow the employer's termination policies, practices, processes and procedures regularly followed by the employer indicates that the termination was not bona fide.

(d) Notwithstanding strict adherence to the participating municipality's regular employment termination polices, practices, processes and procedures or any other facts and circumstances, a termination is not a bona fide termination of employment if at the time of termination there is an expectation, understanding, agreement, or pre-arrangement, whether written or oral, express or implied, between the municipality and employee, or an agent of either, that the termination is or will be temporary or that the person will be rehired in the future, whether such rehire is:

(1) for the same position or a different position;

(2) at a greater, lesser, or equivalent level of compensation;

(3) in the same or any other division or department of the employer;

(4) as a full-time, part-time or temporary employee; or

(5) as an independent contractor, whether directly or through an entity.

(e) If a member applies for a withdrawal or refund of the member's accumulated contributions under the Act, but the system determines, in its discretion, that there was not a bona fide termination of employment or that the member is or has become an employee of another participating municipality before the refund payment has been issued, the system may cancel the refund application.

(f) If a member applies for retirement but, before payment of the retirement benefit begins, the system determines, in its discretion, that there was not a bona fide termination of employment or that the member became an employee of another participating municipality before the member's effective retirement date, the system may cancel the retirement application.

(g) If the system determines, in its discretion, that a person who has retired with a service retirement benefit under the Act is performing or providing services as a purported independent contractor for the person's reemploying municipality and that there was no bona fide termination of employment before the person began performing or providing such services, then:

(1) the system may promptly suspend the person's service retirement annuity payments in accordance with §852.108 of the Act; and

(2) the system may require the person to repay, with earnings or interest, all amounts paid by the system with regard to such service retirement benefit from the effective date of retirement through the date of suspension, or may adjust any future payments of the annuity so that the actuarial equivalent of the benefit to which the person is entitled is paid, or may require a combination of repayment by the member and adjustment of future payments.

(h) If the system determines, in its discretion, that a person who purports to be an independent contractor may in fact be a common law employee, the system may require the person to provide such information regarding the independent contractor status of the individual as it may deem necessary or advisable to make such determination, which may include but not be limited to a filing of an IRS Form SS-8 by the person or the municipality, which shall be subject to review and approval by the system before filing.

§123.3. Return to Work.

(a) Section 852.108(a) of the Act is interpreted to mean that a person's reemploying municipality is the municipality for which the person most recently performed creditable service before the person's retirement with respect to a particular individual account of the person under the Act.

(b) When the system discontinues and suspends the payment of a service retirement annuity pursuant to §852.108(c) of the Act, the full amount of the monthly payments of the service retirement annuity that is allowed because of the person's retirement from the reemploying municipality (including any portion of the annuity that may be attributable to creditable service as a prior employee of a participating municipality(ies) other than the reemploying municipality) shall be suspended.

(c) If a person is receiving more than one service retirement annuity because the person has a retirement with respect to more than one individual account, only the retirement annuity that is allowed because of the person's retirement from the reemploying municipality (including any portion of the annuity that may be attributable to creditable service as a prior employee of a participating municipality(ies) other than the reemploying municipality) shall be suspended as a result of returning to work for that reemploying municipality.

(d) For purposes of §852.108(h)(2) of the Act, the basic annuity determined pursuant to §852.108(h)(2)(A) of the Act is actuarially determined from the sum of the member's contributions made and accumulated since the date the person last became a member, together with interest accumulated on that amount since the person last became a member and an amount from the benefit accumulation fund equal to the amount of the member's contributions credited to the member's individual account since the person last became a member together with interest accrued on that amount since the person last became a member.

(e) For purposes of clarification, §852.108(i) of the Act applies only in the event that, under §852.108(h) of the Act, a person selects a benefit payable as an annuity pursuant to §852.108(h)(2) of the Act and does not apply in the event that the person selects a refund of accumulated contributions pursuant to §852.108(h)(1) of the Act.

(f) For purposes of §852.108(j)(2) of the Act, at least eight consecutive years must have passed since the person's most recent effective retirement date from the reemploying municipality before the person resumes employment with the reemploying municipality.

§123.4. Month of Credited Service and Year of Credited Service Defined.

(a) A month of credited service is any calendar month in which a member makes a required contribution, as reported to the system by the participating municipality.

(b) A year of credited service is comprised of any 12 months of credited service, whether or not the months are consecutive.

(c) No service credit will be given to a participant for a contribution received by the system after termination of membership in accordance with §852.104 of the Act, unless such person is reemployed for a participating municipality pursuant to §§852.108 and 852.109 of the Act.

§123.5. Restricted Prior Service Credit.

(a) The granting of restricted prior service credit under §853.305 of the Act in combination with other credited service earned by a member may result in the member becoming a vested member, as defined by the Act.

(b) If, to establish that a member who is seeking to establish restricted prior service credit qualifies for the restricted prior service credit based on service within the Department of Defense, the system receives a United States Department of Defense Certificate of Release or Discharge from Active Duty (Form DD 214 or any subsequent version of such form) that reflects active duty or prior active duty service by the member, the system may grant restricted prior service credit based on the service reflected in the Department of Defense certificate without receiving a detailed statement of the prior service that is verified on a system form by an official custodian of personnel records of the Department of Defense. A member seeking to establish restricted prior service credit in accordance with this subsection must satisfy all other requirements under §853.305 of the Act.

(c) If records in the custody of the system verify that a member who is seeking to establish restricted prior service credit qualifies for the restricted prior service credit based on service credit previously canceled because of the member's withdrawal of contributions from TMRS, the system will be deemed to have complied with the verification requirements of §853.305(c) of the Act and the system may grant the restricted prior service credit upon satisfaction of the other applicable requirements. A member seeking to establish restricted prior service credit in accordance with this subsection must satisfy all other requirements under §853.305 of the Act.

§123.6. Updated Service Credit Calculations.

(a) In calculating the average updated service compensation used in the Updated Service Credit calculation, the highest and lowest deposits in the thirty-six (36) month period being used shall be disregarded, and the average updated service compensation shall be computed based on the remaining thirty-four (34) deposits.

(b) This rule is effective January 1, 2008.

§123.7. Requirement of Spousal Consent.

(a) A vested member who is currently married may not designate a primary beneficiary other than the member's spouse or select a form of payment of a retirement or survivor annuity other than a joint-and-survivor annuity that pays benefits to the member's spouse on the death of the member, unless the member's spouse consents to the designation or selection.

(b) The consent of a spouse required by subsection (a) of this section must be in writing and acknowledged before a notary public.

(c) The consent required by subsection (a) of this section is not required if it is established to the satisfaction of the director, or the director's designee, that:

(1) there is no spouse;

(2) the spouse cannot be located;

(3) the spouse has been judicially declared incompetent in which case the consent may be given by the guardian or other ad litem;

(4) a duly licensed physician has determined that the spouse is not mentally capable of managing his or her own affairs, in which case the consent may be given by the member provided the member would not be disqualified to serve as guardian of the incapacitated spouse and the director, or the director's designee, is satisfied that a guardianship of the estate is not necessary; or

(5) the spouse and the member have been married for less than one year as of the date the annuity first becomes payable.

(d) The consent required by subsection (a) of this section is also not required with respect to any portion of a member's retirement benefit that has been awarded to a former spouse(s) under a qualified domestic relations order(s), but the consent requirement does apply to the remaining portion of the member's retirement benefit.

(e) For the purposes of this section, the term "joint-and-survivor annuity that pays benefits to the member's spouse on the death of the member" means a retirement annuity for the life of the member with a survivor annuity for the life of the spouse which is not less than 50% of the amount of the annuity which is payable during the joint lives of the member and the spouse, or, if the member dies before retirement, a survivor annuity for the life of the spouse which is not less than the actuarial equivalent of an annuity described by §854.104(c)(1) of the Act when the member has died before retirement.

(f) A member eligible for retirement must certify his or her current marital status on any retirement application, or any other application for benefits on which the system requires the member to provide marital status information, filed with the system. The system and employees of the system may rely on any such certification and shall not be liable to any person for making payment of any benefits in accordance with such certification, regardless of whether the certification is later shown to have been false on the date of execution.

§123.8. Effect of Divorce.

Except as otherwise expressly provided below, (i) if a member or retiree designates a person who is his or her spouse as a beneficiary and becomes divorced from that person, then the beneficiary designation automatically becomes void as to that person upon divorce, and (ii) to

have such person become a beneficiary again, the person must be designated as a beneficiary on the system's appropriate beneficiary designation form completed and filed with the system after the date of divorce. In the event a retiree names a person who is his or her spouse as beneficiary on an optional service retirement annuity selected pursuant to §§854.104(c)(1), (2) or (5) of the Act, and becomes divorced from such person after the retiree's effective date of retirement, the divorce does not automatically void such beneficiary designation.

§123.9. Post-Retirement Contributions.

(a) If a contribution that would otherwise be credited to the member's individual account in the system is deposited after the member's effective retirement date for services performed before the effective retirement date, the retirement annuity shall be recalculated in accordance with this section.

(b) The following deposits shall be treated as additional accumulated contributions for purposes of recalculating the retirement annuity:

(1) employee contributions attributable to compensation for services performed while a member of the system but deposited within 2 months after the effective retirement date of the member; and

(2) employee contributions attributable to compensation for services performed while a member of the system but deposited within 2 months after the death of a deceased member.

(c) A retirement annuity subject to this section will be recalculated as of the effective retirement date by taking into account the additional accumulated contributions and the related increases in current service credit and matching credit. The recalculated retirement annuity will be based on the age of the retiree (and the age of the beneficiary in the case of a joint and survivor option) as of the effective retirement date.

(d) The recalculated retirement annuity is payable only prospectively beginning with the month following the month in which the retirement system receives the deposit.

§123.10. Payments Due on Death of Retiree or Annuitant.

Any and all payments due to a deceased retiree or deceased annuitant that have not been made, or that have been made but are non-negotiable after the retiree's or annuitant's death, including, but not limited to, final annuity payments and partial lump-sum distributions, may be made payable to the designated beneficiary or beneficiaries on file with the system on the date of the retiree's or annuitant's death.

§123.11. Supplemental Disability Benefits Not Reduced by Certain Increases in Base Benefit.

Where current service annuities and prior service annuities being paid to employees retired for service-connected disability are increased by the participating municipality pursuant to the §854.203 of the Act, such increase in the current service annuity and/or prior service annuity shall not operate to reduce the supplemental retirement benefit, if any, payable to such member, and such supplemental benefit shall continue to be paid in the same monthly amount as was being paid such member prior to such increase in the basic benefit amount.

§123.12. Affidavits of Heirship for Determination of Payments Due Heirs.

(a) Refund or Escheated Account Payable to an Estate. For purposes of making payments in accordance with §§854.501, and 855.603 of the Act, or required minimum distributions required by §401(a)(9) of the Internal Revenue Code and the regulations adopted under that provision, the system may, if no designated beneficiary survived the decedent and no small estate affidavit has been filed with the clerk of the court having jurisdiction and venue as provided by Chapter 205 of the Estates Code, accept instead an affidavit meeting the requirements of this section, sworn to by two disinterested witnesses, by the heirs who have legal capacity, and, if the facts warrant, by the natural guardian or next of kin of any minor or incompetent who is also an heir.

(b) Deceased Retiree's or Annuitant's Estate. If no designated beneficiary survived the retiree or annuitant and no small estate affidavit has been filed with the clerk of the court having jurisdiction and venue as provided by Chapter 205 of the Estates Code, the system may accept an affidavit meeting the requirements of this section, sworn to by two disinterested witnesses, by the heirs who have legal capacity, and, if the facts warrant, by the natural guardian or next of kin of any minor or incompetent who is also an heir, for purposes of making any payment due to a retiree's or annuitant's estate.

(c) Any affidavit, other than a small estate affidavit, shall include the names and addresses of the heirs and witnesses and establish these facts:

(1) whether or not a surviving spouse of the deceased member exists;

(2) no petition for the appointment of a personal representative of the deceased member is pending or has been granted;

(3) 30 days have elapsed since the death of the deceased member; and

(4) the value of the entire assets of the deceased member's estate, excluding homestead and exempt property, does not exceed $50,000.

(d) The affidavit shall also:

(1) include a list of the assets and liabilities of the estate;

(2) show the facts that constitute the basis for the right of the heirs to receive the estate; and

(3) show the fractional interests of the heirs in the estate as a result of those facts.

(e) For purposes of this section, "heir" has the meaning assigned by §22.015 of the Estates Code, except that the term excludes any persons who have filed with the system a proper disclaimer or renunciation.

(f) Acceptance of an affidavit that substantially complies with the requirements of this section rests in the sole discretion of the system. In accordance with §851.004 of the Act, the system, board of trustees, director, members of an advisory committee or medical board appointed by the board of trustees, and staff of the system shall not be liable for payment of benefits to heirs in accordance with an affidavit provided to the system.

§123.13. Beneficiary Causing Death of Member or Annuitant.

(a) When the death of a member or annuitant of the system appears not to be the result of natural causes, the system may delay payments in accordance with §854.504 of the Act. An amended death certificate, or documentation from a law enforcement entity or prosecutor's office that is investigating the member's or annuitant's death stating that the beneficiary is not a suspect or a person of interest in the death of the member or annuitant, shall be sufficient for the system to release benefits to the beneficiary.

(1) Should the system receive notice or other information that a beneficiary has become a suspect or person of interest after an annuity has begun to be administered, then the system may immediately suspend payments of said annuity at that time.

(2) The system may commence or resume annuity payments, including payment of any previously suspended payments, to the appropriate person once the beneficiary is determined to not have caused the death of the member or annuitant or the system receives:

(A) a notice of conviction;

(B) an amended death certificate; or

(C) documentation from a law enforcement entity or prosecutor's office that is investigating the member's or annuitant's death stating that the beneficiary is not a suspect or a person of interest in the death of the member or annuitant.

(3) No interest will be paid on any of the delayed or suspended annuity payments under this section or the Act.

(b) In accordance with §851.004 of the Act, the system, board of trustees, director, members of an advisory committee or medical board appointed by the board of trustees, and staff of the system shall not be liable should the system: release any benefits to a person who is later convicted of causing the member's or annuitant's death; or, not release benefits to a person who was convicted of causing the death of a member or annuitant, as defined in §854.504 of the Act, and instead pay such benefits to another person pursuant to the provisions of §854.504 of the Act, but then the convicted person's conviction is later overturned.

§123.14. Certain Convicted Elected Officials Ineligible for Retirement Annuity.

(a) This section is being adopted pursuant to Government Code §810.003 and applies only to a person who is otherwise eligible for membership in the system because the person was elected or appointed to an elected office. In the event that a member or retiree has more than one membership account in the system through employment with more than one participating municipality in the system, this section applies only to the individual account or annuity that is associated with services for the participating municipality where the member or retiree was holding elected office when convicted of a qualifying felony while in that elected office.

(b) Except as expressly provided otherwise, this section shall not apply to system benefits other than service retirement annuity benefits to the extent such other benefits are available to a member or retiree, including but not limited to: occupational disability benefits, or supplemental death benefits payable to the beneficiary(ies) or heir(s) of a member or retiree.

(c) In this section, "qualifying felony" means any felony that is committed on or after June 6, 2017, involving one or more of the following:

(1) bribery;

(2) embezzlement, extortion, or other theft of public money;

(3) perjury;

(4) coercion of public servant or voter;

(5) tampering with governmental record;

(6) misuse of official information;

(7) conspiracy or the attempt to commit any of the offenses described in paragraphs (1) - (6) of this subsection;

(8) abuse of official capacity; or

(9) as otherwise defined in Government Code, §810.003(a)(2).

(d) A participating municipality must provide written notice to the system of the conviction of any member or retiree of the system who was elected or appointed to an elected office of the participating municipality and who is convicted of a qualifying felony committed while in elected office and arising directly from the official duties of that elected office. A participating municipality must provide the notice no later than the 30th day after the conviction of the member. The notice must:

(1) clearly state the convicted person's name, social security number or other identifying information, title of elected office, date of conviction, court of jurisdiction, case number, qualifying felony violation, date of offense, and an explanation of the connection of the qualifying felony to the person's performance of his or her official duties;

(2) include a copy of the official conviction of the person entered by the court, including the judge's affirmative finding of fact that the person is an elected or appointed holder of an elected office of the participating municipality who committed a qualifying felony while in office and in the course of performing official duties of that elected office; and

(3) if applicable, include a copy of the court's award of all or a portion of the convicted person's service retirement annuity to the person's spouse pursuant to a just and right division upon the person's conviction or pursuant to a written agreement between the spouses as provided by Subchapter B, Chapter 4, Family Code, entered into prior to the person's commission of the offense.

(e) Notwithstanding subsection (d)(3) of this section, for the system to administer any court order as described in that paragraph, the order also must meet the requirements for a qualified domestic relations order under Chapter 804, Government Code, and Chapter 129 of this title ("QDRO").

(f) Upon receipt of notice as provided in Government Code §810.003 of a conviction of a qualifying felony, substantially similar to the notice required from a participating municipality, the system shall suspend payments of a service retirement annuity to a retiree who the system determines is ineligible to receive the annuity under Government Code §810.003(c) effective the month following the month in which the system receives such notice.

(g) Subject to any applicable QDRO, a member who is ineligible to receive a service retirement annuity under Government Code §810.003(c) is entitled to a refund of the member's accumulated contributions, including interest earned on those accumulated contributions, subject to the convicted person applying for withdrawal of the accumulated contributions and interest in accordance with the Act and system rules. Upon such withdrawal, the person no longer shall be a member in the system in accordance with Government Code §852.104. A retiree whose service retirement annuity payments are suspended in accordance with Government Code §810.003(d) is not entitled to any refund or withdrawal from the system; provided, however, that:

(1) the deceased retiree's beneficiary(ies), his or her estate or the estate of the deceased retiree whose service retirement annuity payments were suspended in accordance with Government Code §810.003(d) may receive a refund of unrecovered accumulated contributions in accordance with Government Code §854.502, to the extent that section applies; and

(2) if a retiree also has a member account pursuant to Government Code §852.108 or §852.109, the person is entitled to a refund of such member account under this subsection if the person has not applied for retirement of such member account and is not receiving a

retirement annuity for that member account at the time TMRS receives notice of the conviction.

(h) System benefits payable to an alternate payee under a QDRO pursuant to Government Code Chapter 804 or Government Code §810.003(h) are not affected by:

(1) a member's ineligibility to receive a service retirement annuity pursuant to Government Code §810.003(c), except to the extent that the alternate payee of a member who receives a refund of accumulated contributions and interest is eligible only for a refund of accumulated contributions and interest as provided in the QDRO; or

(2) suspension of a retiree's service retirement annuity payments pursuant to Government Code §810.003(d) unless the alternate payee of a retiree convicted of a qualifying felony also is convicted of a felony as a party to the offense as defined by §7.01, Penal Code, or of another qualifying offense arising out of the same criminal episode as defined by §3.01, Penal Code, in which case the alternate payee forfeits the retiree's service retirement annuity and service retirement contributions to the same extent as the member.

(i) Upon receipt of a notice of a judgment overturning the conviction of, or determining that the requirements for innocence under Civil Practice and Remedies Code §103.001(a)(2) are met for a person previously convicted for a qualifying felony described in Government Code §810.003, if the person was a retiree at the time of the conviction, the person is entitled to receive a lump sum amount equal to the accrued total of payments and interest earned on the payments withheld during the suspension period and may resume service retirement annuity payments. Under this subsection, "interest earned on the payments withheld during the suspension period" shall mean interest that is applied annually, without compounding, at the same rate set by the Board as the discount rate for determining the present value of future cash flows in developing the annuity purchase rate pursuant to §855.110 of the Act.

§123.15. Calculation of Member Supplemental Death Benefits.

To calculate a member's supplemental death benefit pursuant to §854.603 of the Act where the system's records show no contributions in any of the 12 months immediately preceding the month of death of the member, the system will require verification from the municipality of the rate of compensation payable to the member during the month of death and may require verification from the municipality of periods of employment of the member.

§123.16. Retiree Supplemental Death Benefit.

(a) Subject to subsection (b) of this section, if a retiree has more than one retirement account through TMRS after retiring from more than one participating municipality, and the participating municipality for each retirement account participates in the post-retirement supplemental death benefits under §854.604 of the Act, only one supplemental death benefit will be payable upon the death of such person. If a retiree has more than one retirement account through TMRS after retiring from more than one participating municipality, and the most recent retirement account was based on retirement from a municipality that does not provide a post-retirement supplemental death benefit for retirees, the retiree's beneficiary shall receive a post-retirement supplemental death benefit based on an earlier (and most recent) retirement account based on retirement from a municipality that does provide such a benefit, but the retiree's beneficiary shall not receive more than one supplemental death benefit.

(b) If a participant, at the time of his or her death, is both (i) a retiree from a participating municipality that is then providing post-retirement supplemental death benefits and (ii) an employee of a participating municipality who is included within the coverage or extended coverage of such municipality's supplemental death program, only one supplemental death benefit will be payable upon the death of such person and such benefit will be the greater of the two amounts as calculated under §854.603 and 854.604 of the Act.

(c) For purposes of §854.605(a)(2) of the Act, unless a member has directed otherwise on a TMRS prescribed form filed with the system, if a supplemental death benefit is payable upon the death of a retiree but the retiree's annuity has no further remaining payments after the death of the retiree, then such supplemental death benefit is payable to the beneficiary designation made for purposes of the retiree's retirement annuity.

§123.17. Actuarial Tables.

(a) For the period from the January 22, 2001 original initial effective date of this section through December 31, 2014, service retirement benefits shall be calculated on the basis of the UP-1984 table with an age set back of two years for retired members and an age set back of eight years for beneficiaries of retired members.

(b) For the period from the January 22, 2001 original initial effective date of this section through December 31, 2014, disability retirement benefits on disability retirements shall be calculated on the basis of the UP-1984 table with an age set back of two years for disabled annuitants and an age set back of eight years for beneficiaries of disabled annuitants.

(c) Effective beginning January 1, 2015, service retirement benefits for retired members, and disability retirement benefits on disability retirements for disabled annuitants, shall be calculated on the basis of a 70%/30% male/female blend of the RP-2000 Blue Collar Table with 107.5% load, and with a fully generational Scale BB projection. Effective beginning January 1, 2015, service retirement benefits for beneficiaries of retired members, and disability retirement benefits on disability retirements for beneficiaries of disabled annuitants, shall be calculated on the basis of a 30%/70% male/female blend of the RP-2000 Blue Collar Table with 107.5% load, and with a fully generational Scale BB projection.

(d) After consultation with the retirement system's actuary, the Board may elect by Board resolution to phase in over a reasonable period of time the impact on annuity purchase rates that may result from any changes in mortality tables, other actuarial tables, or actuarial equivalents adopted by the Board from time to time.

§123.18. Authority to Make Actuarial Changes.

After considering the results of the actuarial experience study performed by the retirement system's actuary or at such other times as necessary, the Board of trustees may adopt changes to the actuarial cost method, actuarial assumptions and mortality tables by Board resolution or other Board action. The Board resolution or action shall specify the first actuarial valuation and plan year affected by the changes.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 27, 2020.

TRD-202003566
Christine M. Sweeney
General Counsel
Texas Municipal Retirement System
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 225-3710

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

As required by Texas Government Code, §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC.

Texas Government Code, §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes amendments to §9.153 in Subchapter D, Home and Community-based Services (HCS) Program and Community First Choice (CFC) and §9.553 in Subchapter N, Texas Home Living (TxHmL) Program and Community First Choice (CFC), in Title 40, Part 1, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the proposal is to revise the definitions of "provisional contract" and "standard contract" to ensure consistency with the definitions of those terms in Title 40, Part 1, Chapter 49, Contracting for Community Services. HHSC is proposing amendments to Chapter 49 to allow HHSC to limit a provisional contract to a term of no more than three years, and a standard contract to a term of no more than five years. The Chapter 49 amendments are proposed elsewhere in this issue of the *Texas Register.* The proposed amendments specify that the maximum term lengths do not include any extensions to which HHSC and a contractor may agree. Currently, a provisional contract must have a stated expiration date but there is no maximum term length set by rule. A standard contract currently does not have a stated expiration date, so it continues until terminated by HHSC or the contractor.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §9.153 revises the definitions of "provisional contract" and "standard contract" for the HCS Program to specify the term lengths for contracts and to state that the maximum term lengths do not include any extensions to which HHSC and a contractor may agree. The amendment also deletes the description of a provisional contract as being an "initial" contract because the meaning of initial was not clear in this context and Texas Administrative Code (TAC), Title 40, §49.208 explains the circumstances under which HHSC enters into a provisional contract.

The proposed amendment to §9.553 revises the definitions of "provisional contract" and "standard contract" for the TxHmL Program to specify the term lengths for contracts and to state that the maximum term lengths do not include any extensions to which HHSC and a contractor may agree. The amendment also deletes the description of a provisional contract as being an "initial" contract because the meaning of initial was not clear in this context and 40 TAC §49.208 explains the circumstances under which HHSC enters into a provisional contract.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will not create a new rule;

(6) the proposed rules will expand existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. These rules do not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Kay Molina, Deputy Executive Commissioner, Procurement and Contracting Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from having a description of the new contracting process used by HHSC.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there are no new requirements for contractors to alter current business practices.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R048" in the subject line.

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §9.153

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The proposed amendments affect Texas Government Code, §531.0055, §531.021, and Chapter 531, Subchapter A-1, and Texas Human Resources Code, §32.021.

§9.153. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) - (90) (No change.)

(91) Provisional contract--A [~~An initial~~] contract that HHSC enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a term of no more than three years, not including any extension agreed to in accordance with §49.208(e) of this title [~~stated expiration date~~].

(92) - (113) (No change.)

(114) Standard contract--A contract that HHSC enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance with §49.209(d) of this title [~~does not have a stated expiration date~~].

(115) - (131) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2020.

TRD-202003574
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-5609

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SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §9.553

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The proposed amendments affect Texas Government Code, §531.0055, §531.021, and Chapter 531, Subchapter A-1, and Texas Human Resources Code, §32.021.

§9.553. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) - (76) (No change.)

(77) Provisional contract--A [~~An initial~~] contract that HHSC enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a term of no more than three years, not including any extension agreed to in accordance with §49.208(e) of this title (relating to Standard Contract) [~~stated expiration date~~].

(78) - (96) (No change.)

(97) Standard contract--A contract that HHSC enters into with a program provider in accordance with §49.209 of this title [~~(relating to Standard Contract)~~] that has a term of no more than five years, not including any extension agreed to in accordance §49.209(d) of this title [~~does not have a stated expiration date~~].

(98) - (112) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2020.

TRD-202003575
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-5609

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CHAPTER 42. DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SERVICES

SUBCHAPTER A. INTRODUCTION

40 TAC §42.103

As required by Texas Government Code, §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC.

Texas Government Code, §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes an amendment to §42.103 in Title 40, Part 1, Chapter 42, Deaf Blind with Multiple Disabilities (DBMD) Program and Community First Choice (CFC) Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to revise the definition of "contract" to ensure consistency with the definitions of "provisional contract" and "standard contract" in Title 40, Part 1, Chapter 49, Contracting for Community Services. HHSC is proposing amendments to Chapter 49 to allow HHSC to limit a provisional contract to a term of no more than three years, and a standard contract to a term of no more than five years. The Chapter 49 amendments are proposed elsewhere in this issue of the *Texas Register.* The proposed amendments specify that the maximum term lengths do not include any extensions to which HHSC and a contractor may agree. Currently, a provisional contract must have a stated expiration date but there is no maximum term length set by rule. A standard contract currently does not have a stated expiration date, so it continues until terminated by HHSC or the contractor.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §42.103 revises the definition of "contract" for the DBMD Program to specify the term lengths for contracts and to state that the maximum term lengths do not include any extensions to which HHSC and a contractor may agree.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will expand existing rules;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Kay Molina, Deputy Executive Commissioner, Procurement and Contracting Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from having a description of the new contracting process used by HHSC.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because there are no new requirements for contractors to alter current business practices.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R048" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The proposed amendment affects Texas Government Code, §531.0055, §531.021, and Chapter 531, Subchapter A-1, and Texas Human Resources Code, §32.021.

§42.103. Definitions.

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

(1) - (28) (No change.)

(29) Contract--A provisional contract that HHSC enters into in accordance with §49.208 of this title [~~chapter~~] (relating to Provisional Contract Application Approval) that has a term of no more than three years, not including any extension agreed to in accordance with §49.208(e) of this title [~~stated expiration date~~] or a standard contract that HHSC enters into in accordance with §49.209 of this title [~~chapter~~] (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance with §49.209(d) of this title [~~does not have a stated expiration date~~].

(30) - (124) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2020.

TRD-202003576
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-5609

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CHAPTER 45. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES AND COMMUNITY FIRST CHOICE (CFC) SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §45.103

As required by Texas Government Code, §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC.

Texas Government Code, §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes amendments to §45.103 in Title 40, Part 1, Chapter 45, Community Living Assistance and Support Services and Community First Choice (CFC) Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to revise the definition of "contract" to ensure consistency with the definitions of "provisional contract" and "standard contract" in Title 40, Part 1, Chapter 49, Contracting for Community Services. HHSC is proposing amendments to Chapter 49 to allow HHSC to limit a provisional contract to a term of no more than three years, and a standard contract to a term of no more than five years. The Chapter 49 amendments are proposed elsewhere in this issue of the *Texas Register.* The proposed amendments specify that the maximum term lengths do not include any extensions to which HHSC and a contractor may agree. Currently, a provisional contract must have a stated expiration date but there is no maximum term length set by rule. A standard contract currently does not have a stated expiration date, so it continues until terminated by HHSC or the contractor.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §45.103 revises the definition of "contract" for the Community Living Assistance and Support Services Program to specify the term lengths for contracts and to state that the maximum term lengths do not include any extensions to which HHSC and a contractor may agree.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will expand existing rules;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Kay Molina, Deputy Executive Commissioner, Procurement and Contracting Services, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from having a description of the new contracting process used by HHSC.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because there are no new requirements for contractors to alter current business practices.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R048" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The proposed amendment affects Texas Government Code, §531.0055, §531.021, and Chapter 531, Subchapter A-1, and Texas Human Resources Code, §32.021.

§45.103. Definitions.

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

(1) - (32) (No change.)

(33) Contract--A provisional contract that HHSC enters into in accordance with §49.208 of this title [~~chapter~~] (relating to Provisional Contract Application Approval) that has a term of no more than 3 years, not including any extension agreed to in accordance with §49.208(e) of this title [~~stated expiration date~~] or a standard contract that HHSC enters into in accordance with §49.209 of this title [~~chapter~~] (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance with §49.209(d) of this title [~~does not have a stated expiration date~~].

(34) - (125) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2020.

TRD-202003577
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-5609

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CHAPTER 49. CONTRACTING FOR COMMUNITY SERVICES

As required by Texas Government Code, §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC.

Texas Government Code, §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system,

including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes amendments to §§49.102, 49.208 - 49.210, 49.532, 49.551, 49.601, and 49.702; and new §49.561 in Title 40, Part 1, Chapter 49, Contracting for Community Care Services.

BACKGROUND AND PURPOSE

Chapter 49, Contracting for Community Services, governs contracting with HHSC to provide the community-based services for which DADS previously contracted. The proposed rules limit a provisional contract to a term of no more than three years, and a standard contract to a term of no more than five years, not including any contract extensions.

The proposed rules also implement changes in the enrollment and renewal processes for contractors subject to Chapter 49. Currently, HHSC enters into a provisional contract with a qualified contractor. A provisional contract must have a stated expiration date, generally no more than 30 months from the date the contract term begins. If, before the provisional contract term expires, HHSC determines the contractor meets contract and program qualifications, HHSC may enter into a standard contract, which does not have a stated expiration date, with the contractor. These proposed rule amendments change a standard contract from being open-ended to having a term of no more than five years. HHSC will determine, before each provisional or standard contract term expires, whether the contractor will be offered a standard contract. This operational change will ensure that HHSC contracts for community-based services are routinely reviewed and updated to contain current contract provisions.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §49.102 revises the definitions of "provisional contract" and "standard contract" to specify the term lengths for contracts and to state that the maximum term lengths do not include any extensions to which HHSC and a contractor may agree. The proposed amendment also deletes "initial" from the definition of a provisional contract because the meaning of "initial" was not clear in this context and §49.208 explains the circumstances under which HHSC enters into a provisional contract.

The proposed amendment to §49.208(c) clarifies that HHSC may subject a provisional contract to certain conditions. The proposed amendment to subsection (e) specifies that an agreement between HHSC and a contractor to extend the term of a provisional contract must be in writing and clarifies that HHSC's agreement to extend a provisional contract is not a decision by HHSC that it will offer a standard contract to the contractor. The proposed amendment allows a provisional contract to be extended only once and for no more than one year.

The proposed amendment to §49.209 adds new subsection (a) to clarify that, during a provisional or standard contract term, HHSC may offer the contractor a standard contract that will be effective the day after the existing contract ends. Currently, HHSC does not offer subsequent standard contracts to a contractor because a standard contract does not have a stated expiration date and continues until terminated by HHSC or the contractor. The proposed amendment allows for multiple standard contracts. The proposed amendment also adds new subsection (d) to allow HHSC and a contractor to agree in writing to extend the term of a standard contract. The proposed amendment allows a standard contract to be extended only once and for no more than one year. Subsection (d) also specifies that HHSC's agreement to extend a standard contract is not a decision by HHSC that it will offer another standard contract to the contractor. The proposed amendment also states that if a contractor does not enter into a standard contract in accordance with HHSC's instructions, HHSC notifies appropriate parties of the application denial period set by HHSC. Currently, the rule provides that this occurs if a contractor "refuses" a standard contract, which may give the impression that HHSC would send notice of an application denial period only after a contractor took some action to refuse a standard contract. Under the proposed amendment, HHSC may send notice of an application denial period based on a contractor's inaction. The proposed amendment deletes subsections (a), (b), (c) and (e), relating to a contractor's qualification for a standard contract, because the reasons HHSC may decide not to offer a standard contract to a contractor are set forth in subsection (a) of proposed new §49.561, concerning HHSC Does Not Offer a Standard Contract. Subsection (d) is deleted but new subsection (a) provides the same information, which is that a standard contract HHSC offers is for the same program, service, or facility, in the same service, catchment, or waiver contract area as the contract in effect when HHSC offered the standard contract. Subsection (a) also states that the terms of the contract that HHSC offers may be different than the existing contract.

The proposed amendment to §49.210 revises the rule references in subsections (a)(1) and (b)(1) to reflect proposed amendments to §49.551.

The proposed amendment to §49.532(b)(2) allows HHSC to impose a vendor hold on a contractor if HHSC does not offer the contractor a standard contract when its contract expires. This is similar to the existing provision, which allows HHSC to impose a vendor hold if a contractor does not qualify for a standard contract when its provisional contract expires. The proposed amendment to §49.532(b)(3) allows HHSC to impose a vendor hold on a contractor that does not enter into a standard contract when its contract expires. This is similar to the existing provision, which allows HHSC to impose a vendor hold if a contractor qualifies for a standard contract when its provisional contract expires, but the contractor refuses a standard contract. Both revisions are necessary to reflect that HHSC may offer successive standard contracts to a contractor instead of only one. In addition, the amendment uses terminology consistent with other amendments being made in this chapter. Specifically, the proposed amendment does not refer to a contractor "qualifying" for a standard contract or a contractor "refusing" a standard contract.

The proposed amendment to §49.551 requires a contractor to notify HHSC if it intends to not enter into a standard contract when its contract expires. The notification requirements are substantially the same as the notice required for contract termination. The proposed amendment adds requirements for a contractor and for HHSC when a contractor does not enter into a standard contract when its contract expires. These requirements are the same as the actions that must be taken when a contractor terminates its contract. The proposed amendment also revises the references in subsection (c)(2)(C) to reflect proposed amendments to §49.702.

Proposed new §49.561 describes the circumstances under which HHSC may decide not to offer a standard contract to a contractor. HHSC may make this decision for the same reasons it may deny a provisional contract application or terminate a contract. In addition, HHSC may decide not to offer a standard contract to a contractor that has a provisional contract and HHSC has imposed a vendor hold during the term of that

contract. The proposed new section also describes what a contractor must do if HHSC decides not to offer a standard contract. Specifically, the contractor must cooperate with HHSC; the local intellectual and developmental disability authority, if applicable; and other contractors to transfer individuals receiving services. The contractor must also submit documentation and take other action directed by HHSC. Finally, the proposed new rule describes what HHSC does when it decides not to offer a standard contract to a contractor. These actions are the same as when HHSC terminates a contract--it provides certain notice to individuals receiving services; removes the contract from the choice list; and notifies the relevant persons of the application denial period that HHSC set.

The proposed amendment to §49.601 revises subsection (a) to reflect that HHSC may review a contractor's records to evaluate billing standards if HHSC does not offer the contractor a standard contract or when a contractor does not enter into a standard contract when its contract expires. The amendment uses terminology consistent with other amendments being made in this chapter. Specifically, the proposed amendment does not refer to a contractor "qualifying" for a standard contract or a contractor "refusing" a standard contract.

The proposed amendment to §49.702 requires the minimum application denial period for a contractor that is not offered a standard contract to be 12 months. Current rule requires HHSC to set an application denial period of at least 24 months for a contractor that does not qualify for a standard contract. The amendment gives HHSC more flexibility to set an application denial period based on the facts of each situation. The proposed amendment deletes existing subsection (b) and incorporates its provisions into subsection (d) as proposed. The proposed amendment makes non-substantive changes to subsection (c) as proposed. The proposed amendment to subsection (d), as proposed, incorporates the provisions of existing subsection (b), which describes the application denial period for a contractor that does not enter into a standard contract (in current rule, described as a contractor that refuses a standard contract). The proposed amendment to subsection (e), as proposed, makes the subsection apply to a contractor that does not enter into a standard contract, as well as a contractor that terminates its contract. The proposed amendment to subsection (f) clarifies that the type of contract application that would be submitted after a contract denial period is completed would be a provisional contract application. In several places, references to a provisional or standard contract have been changed to "contract" because, as defined, a contract includes both types.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create a new rule;

(6) the proposed rules will expand existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. These rules do not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Kay Molina, Deputy Executive Commissioner, Procurement and Contracting Services, has determined that for each year of the first five years the proposed rules are in effect, the public will benefit from having a description of the new contracting process used by HHSC.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there are no new requirements for contractors to alter current business practices.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R048" in the subject line.

SUBCHAPTER A. APPLICATION AND DEFINITIONS

40 TAC §49.102

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The proposed amendments affect Texas Government Code, §531.0055, §531.021, and Chapter 531, Subchapter A-1, and Texas Human Resources Code, §32.021.

§49.102. Definitions.

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

(1) - (52) (No change.)

(53) Provisional contract--A [~~An initial~~] contract that HHSC enters into in accordance with §49.208 of this chapter (relating to Provisional Contract Application Approval) that has a term of no more than three years, not including any extension agreed to in accordance with §49.208(e) of this chapter [~~stated expiration date~~].

(54) - (60) (No change.)

(61) Standard contract--A contract that HHSC enters into in accordance with §49.209 of this chapter (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance with §49.209(d) of this chapter [~~does not have a stated expiration date~~].

(62) - (67) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2020.

TRD-202003578
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-5609

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SUBCHAPTER B. CONTRACTOR ENROLLMENT

40 TAC §§49.208 - 49.210

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The proposed amendments affect Texas Government Code, §531.0055, §531.021, and Chapter 531, Subchapter A-1, and Texas Human Resources Code, §32.021.

§49.208. Provisional Contract Application Approval.

(a) HHSC approves a provisional contract application if it is not denied in accordance with §49.207 of this subchapter (relating to Provisional Contract Application Denial).

(b) If HHSC approves a provisional contract application, HHSC:

(1) provides written notification to the applicant;

(2) enters into a provisional contract with the applicant; and

(3) except as provided in §49.302(b) of this chapter (relating to General Requirements), places the contract on the choice list for the program or service covered by the provisional contract.

(c) HHSC may subject a [~~A~~] provisional contract [~~may be subject~~] to conditions [~~recommended by HHSC~~] in accordance with 1 TAC Chapter 352 (relating to Medicaid and the Children's Health Insurance Program Provider Enrollment) and 1 TAC Chapter 371, Subchapter E (relating to Provider Disclosure and Screening).

(d) The effective date of a provisional contract is as follows:

(1) if the applicant applied for the contract in accordance with §49.210(a)(2) of this subchapter (relating to Contractor Change of Ownership or Legal Entity), the effective date is the effective date of the change of ownership or legal entity of the contractor; or

(2) for an applicant other than one described in paragraph (1) of this subsection, the effective date is determined by HHSC.

(e) HHSC and a contractor may agree, in writing, to extend the term of a provisional contract. A provisional contract may be extended only once and for no more than one year. The extension of a provisional contract is not a decision [~~determination~~] by HHSC that it will offer the contractor [~~qualifies for~~] a standard contract.

§49.209. Standard Contract.

(a) During the term of a provisional or standard contract, HHSC may offer the contractor a standard contract that will be effective the day after the existing contract ends. HHSC offers a standard contract that is for the same program, service, or facility, in the same service, catchment, or waiver contract area as the existing contract, but other terms of the contract offered may be different than the terms of the existing contract.

[~~(a) Except as provided in subsection (e) of this section, a contractor that has a provisional contract, other than a provisional contract for the HCS Program, TxHmL Program, or hospice, qualifies for a standard contract if, based on contract monitoring described in §49.411 of this chapter (relating to Contract and Fiscal Monitoring), HHSC determines that the overall compliance score for the provisional contract is 90 percent or greater.~~]

[(b) Except as provided in subsection (e) of this section, a contractor that has a provisional contract for the HCS or TxHmL Program qualifies for a standard contract if:]

[(1) the contractor is certified by HHSC in accordance with §9.183 of this title (relating to Program Provider Compliance and Corrective Action) or §9.587 of this title (relating to Program Provider Compliance and Corrective Action); and]

[(2) during the term of the provisional contract, HHSC has not imposed a vendor hold on the contractor in accordance with §9.183 or §9.587 of this title.]

[(c) Except as provided in subsection (e) of this section, a contractor that has a provisional contract for hospice qualifies for a standard contract if the contractor has the license and written notification required by §49.205(a)(5) of this subchapter (relating to License, Certification, Accreditation, and Other Requirements).]

[(d) A standard contract issued by HHSC in accordance with subsections (a) - (c) of this section is for the same program, service, or facility in the same service, catchment, or waiver contract area as the provisional contract.]

[(e) A contractor may not qualify for a standard contract for any reason for which HHSC may deny a provisional contract application, as described in §49.207 of this subchapter (relating to Provisional Contract Application Denial).]

(b) [(f)] HHSC may subject a standard contract to conditions in accordance with 1 TAC Chapter 352 (relating to Medicaid and the Children's Health Insurance Program Provider Enrollment) and 1 TAC Chapter 371, Subchapter E (relating to Provider Disclosure and Screening).

[(g) A standard contract is effective the day after the provisional contract ends.]

[(h) If HHSC determines a contractor does not qualify for a standard contract, HHSC notifies:]

[(1) the contractor of the determination, in writing, and includes in the notification the application denial period set in accordance with §49.702(a) of this chapter (relating to Application Denial Period); and]

[(2) any controlling person of the contractor, in writing, of the application denial period.]

(c) [(i)] If HHSC offers a standard contract to a contractor and the [a] contractor does not enter into the [refuses a] standard contract in accordance with HHSC's instructions, HHSC notifies the contractor and any controlling person of the contractor, in writing, of the application denial period set in accordance with §49.702(c) [§49.702(b)] of this chapter (relating to Application Denial Period).

(d) HHSC and a contractor may agree, in writing, to extend the term of a standard contract. A standard contract may be extended only once and for no more than one year. The extension of a standard contract is not a decision by HHSC that it will offer the contractor another standard contract.

§49.210. Contractor Change of Ownership or Legal Entity.

(a) If a contractor intends to undergo a change of ownership or change of legal entity, the following action must be taken to obtain a new provisional contract:

(1) at least 60 days before the proposed date of the change of ownership or change of legal entity, the contractor must notify HHSC in accordance with §49.551 [§49.551(a)] of this chapter (relating to Contractor Terminating Contract or Not Entering into a Standard Contract) [(relating to Termination of Contract by Contractor)] that it intends to terminate the contract;

(2) the contractor (for a change of ownership) or new legal entity (for a change of legal entity) must apply for a provisional contract in accordance with §49.203 of this subchapter (relating to Provisional Contract Application Process) at least 60 days before the proposed date of the change of ownership or change of legal entity;

(3) the contractor or new legal entity must receive approval from HHSC of the provisional contract application before the date of the change of ownership or change of legal entity in accordance with §49.208 of this subchapter (relating to Provisional Contract Application Approval); and

(4) if required to have a license under §49.205 of this subchapter (relating to License, Certification, Accreditation, and Other Requirements) to be a contractor, the contractor or new legal entity must ensure that the date of the change of ownership or change of legal entity is the same as the date of the change of ownership or change of legal entity for the new license.

(b) If a contractor undergoes a change of ownership or change of legal entity and the requirements in subsection (a)(1) - (4) of this section are met, HHSC:

(1) notifies individuals receiving services or LARs in accordance with §49.551(c)(2)(A) [§49.551(e)(1)] of this chapter; and

(2) enters into a new provisional contract with the contractor or new legal entity.

(c) If a contractor undergoes a change of ownership or change of legal entity and the requirements in subsection (a)(1) - (4) of this section are not met, HHSC:

(1) proposes to terminate the contractor's contract in accordance with §49.534(a)(2)(C) of this chapter;

(2) notifies individuals receiving services or LARs in accordance with §49.534(c)(1) and (2) of this chapter; and

(3) does not enter into a new provisional contract with the contractor or new legal entity with an effective date the same as the date of the change.

(d) If a contractor or new legal entity does not receive approval in accordance with subsection (a)(3) of this section, HHSC does not enter into a contract with the contractor or new legal entity.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2020.

TRD-202003579
Karen Ray
Chief Counsel
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Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-5609

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SUBCHAPTER E. ENFORCEMENT BY HHSC, [AND] TERMINATION BY CONTRACTOR, AND NO OFFER OF STANDARD CONTRACT BY HHSC

DIVISION 4. SANCTIONS

40 TAC §49.532

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The proposed amendments affect Texas Government Code, §531.0055, §531.021, and Chapter 531, Subchapter A-1, and Texas Human Resources Code, §32.021.

§49.532. Vendor Hold.

(a) HHSC imposes a vendor hold on a contractor if:

(1) HHSC has proposed to terminate the contract and the contractor participates in attendant compensation rate enhancement as described in 1 TAC §355.112 (relating to Attendant Compensation Rate Enhancement); or

(2) The HHSC Office of Inspector General determines that a vendor hold must be imposed in accordance with 42 CFR §455.23(a) due to a credible allegation of fraud for which an investigation is pending under the Medicaid Program.

(b) HHSC may impose a vendor hold on a contractor:

(1) if HHSC has proposed to terminate the contract and the contractor does not participate in attendant compensation rate enhancement as described in 1 TAC §355.112;

(2) if HHSC does not offer the contractor [~~does not qualify for~~] a standard contract when its contract expires [~~at the expiration of a provisional contract~~];

(3) if the contractor does not enter into [~~qualifies for~~] a standard contract when its contract expires [~~at the expiration of a provisional contract but refuses a standard contract~~];

(4) if the contractor terminates the contract;

(5) if HHSC determines the contractor has not complied with the contract, including a determination of non-compliance described in §49.411(e) of this chapter (relating to Contract and Fiscal Monitoring) or §49.413(e) of this chapter (relating to Investigation);

(6) if the contractor has not submitted or has not complied with an immediate protection plan as described in §49.511(d) of this subchapter (relating to Immediate Protection and Immediate Protection Plan);

(7) if the contractor has not submitted or has not complied with a corrective action plan as described in §49.522(d) of this subchapter (relating to Corrective Action Plan); or

(8) if the contractor's application packet described in §49.203(a)(3) of this chapter (relating to Provisional Contract Application Process):

(A) contained incorrect information; or

(B) contains information that has become incorrect and the contractor has not notified HHSC in accordance with §49.302(i) - (q) of this chapter (relating to General Requirements);

(9) for a contractor that has a contract for the HCS Program, in accordance with §9.183 of this title (relating to Program Provider Compliance and Corrective Action); or

(10) for a contractor that has a contract for the TxHmL Program, in accordance with §9.587 of this title (relating to Program Provider Compliance and Corrective Action).

(c) If HHSC imposes a vendor hold on a contractor in accordance with subsection (a) or (b) of this section, HHSC notifies the contractor of the vendor hold in writing. HHSC may impose a vendor hold pending an administrative hearing appealing the vendor hold.

(d) HHSC releases a vendor hold less any amounts being recouped by HHSC:

(1) imposed in accordance with subsections (a)(1) and (b)(1) - (4) of this section if:

(A) the contract has been terminated or expires and any amounts owed to individuals and LARs have been paid by the contractor;

(B) HHSC withdraws the proposed contract termination; or

(C) the contractor appeals the proposed contract termination and the final decision from the administrative hearing is favorable to the contractor;

(2) imposed in accordance with subsection (a)(2) of this section, if the HHSC Office of Inspector General determines that HHSC must resume payment under the contract;

(3) imposed in accordance with subsection (b)(5) - (8) of this section, if HHSC determines the contractor has resolved the reason for the vendor hold; or

(4) imposed in accordance with subsection (b)(9) - (10) of this section if HHSC determines it may be released as described in §9.183 or §9.587 of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2020.

TRD-202003580
Karen Ray
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Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-5609

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DIVISION 6. [~~TERMINATION BY~~] CONTRACTOR TERMINATING CONTRACT OR NOT ENTERING INTO STANDARD CONTRACT

40 TAC §49.551

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of

HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The proposed amendments affect Texas Government Code, §531.0055, §531.021, and Chapter 531, Subchapter A-1, and Texas Human Resources Code, §32.021.

§49.551. Contractor Terminating Contract or Not Entering into a Standard Contract. [~~Termination of Contract by Contractor.~~]

(a) A contractor must notify HHSC if the contractor intends to:

(1) terminate its contract; or

(2) not enter into a standard contract when its contract expires.

(b) [~~(a)~~] The notification required by subsection (a) of this section must be given [~~If a contractor intends to terminate a contract, the contractor must notify HHSC of the intended termination~~] in accordance with §49.302(q) of this chapter (relating to General Requirements) and [~~. The notification~~] must:

(1) include:

(A) the contract number;

(B) the type of program or service;

(C) the proposed date of contract [~~the~~] termination or the date of contract expiration;

(D) the reason for terminating the contract or not entering into a standard contract [~~the termination~~]; and

(E) if it is notification of termination and the reason for terminating the contract is [~~for~~] a change of ownership or change of legal entity, the proposed date of the change; and

(2) be received by HHSC at least 60 days before the proposed date of the termination or the date of expiration.

(c) [~~(b)~~] If a contractor terminates its contract or does not enter into a standard contract when its contract expires [~~notifies HHSC that it intends to terminate a contract, the contractor must~~]:

(1) the contractor must:

(A) [~~(1)~~] cooperate fully with HHSC, the LIDDA if applicable, and other contractors to transfer individuals receiving services from the contractor; and

(B) [~~(2)~~] submit documentation or take other action as directed by HHSC; and [~~.~~]

(2) [~~(c) If HHSC receives notification that a contractor intends to terminate a contract,~~] HHSC:

(A) [~~(1)~~] notifies individuals receiving services from the contractor or LARs that:

(i) [~~(A)~~] the contractor is terminating the contract or not entering into a standard contract when its contract expires and that HHSC has placed or will place the contractor's payments on a vendor hold; and

(ii) [~~(B)~~] that the individuals or LARs may choose to receive services under a contract listed on the choice list, subject to program-specific requirements; and

(B) [~~(2)~~] removes the contract to be terminated or the expired contract from the appropriate choice list; and [~~.~~]

(C) [~~(d) If a contractor terminates a contract, for a reason other than a change of ownership or change of legal entity, HHSC~~] notifies the contractor and any controlling person, in writing, of the application denial period set in accordance with §49.702(d) or (e) [~~§49.702(e) or (f)~~] of this chapter (relating to Application Denial Period).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2020.

TRD-202003581
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Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-5609

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DIVISION 7. HHSC DOES NOT OFFER A STANDARD CONTRACT

40 TAC §49.561

STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The proposed new rule affects Texas Government Code, §531.0055, §531.021, and Chapter 531, Subchapter A-1, and Texas Human Resources Code, §32.021.

§49.561. HHSC Does Not Offer a Standard Contract.

(a) HHSC may decide not to offer a standard contract to a contractor:

(1) for any reason for which HHSC may deny a provisional contract application, as described in §49.207 of this chapter (relating to Provisional Contract Application Denial);

(2) for any reason for which HHSC may terminate a contract, as described in §49.534 of this subchapter (relating to Termination of Contract by HHSC); or

(3) if the contractor has a provisional contract for the HCS or TxHmL Program and HHSC imposed a vendor hold on the contractor in accordance with §9.183 (relating to Program Provider Compliance and Corrective Action) or §9.587 of this title (relating to Program

Provider Compliance and Corrective Action) during the term of the provisional contract.

(b) If HHSC decides not to offer a contractor a standard contract when its contract expires:

(1) the contractor must:

(A) cooperate fully with HHSC, the LIDDA if applicable, and other contractors to transfer individuals receiving services from the contractor; and

(B) submit documentation or take other action as directed by HHSC; and

(2) HHSC:

(A) notifies individuals receiving services from the contractor or LARs that:

(i) the contractor's contract is ending and HHSC has placed or will place the contractor's payments on a vendor hold; and

(ii) the individuals or LARs may choose to receive services under a contract listed on the choice list, subject to program-specific requirements;

(B) removes the expiring contract from the appropriate choice list; and

(C) notifies:

(i) the contractor of the decision, in writing, and includes in the notification the application denial period set in accordance with §49.702(a) of this chapter (relating to Application Denial Period); and

(ii) any controlling person of the contractor, in writing, of the application denial period set in accordance with §49.702(a) of this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2020.

TRD-202003582
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-5609

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SUBCHAPTER F. REVIEW BY HHSC OF EXPIRING OR TERMINATED CONTRACT

40 TAC §49.601

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The proposed amendments affect Texas Government Code, §531.0055, §531.021, and Chapter 531, Subchapter A-1, and Texas Human Resources Code, §32.021.

§49.601. HHSC Review and Contractor Requirements Related to Expiring or Terminated Contract.

(a) HHSC may review a contractor's records to evaluate billing standards in accordance with program-specific requirements if:

(1) HHSC proposes to terminate the contractor's [~~a~~] contract;

(2) HHSC does not offer the [~~a~~] contractor [~~does not qualify for~~] a standard contract when its contract expires [~~, as described in §49.209 of this chapter (relating to Standard Contract)~~];

(3) the [~~a~~] contractor does not enter into [~~qualifies for~~] a standard contract when its contract expires [~~, as described in §49.209 of this chapter, but refuses a standard contract~~]; or

(4) the [~~a~~] contractor terminates its [~~the~~] contract.

(b) If one of the events described in subsection (a)(1) - (4) of this section occurs, a contractor must provide the following information to HHSC:

(1) the location of records related to the contract expiring or being terminated; and

(2) the name, address, phone number, and e-mail address of a person HHSC may contact to arrange access to records.

(c) HHSC may recoup funds in accordance with §49.533 of this chapter (relating to Recoupment) based on the results of a review described in subsection (a) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2020.

TRD-202003583
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-5609

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SUBCHAPTER G. APPLICATION DENIAL PERIOD

40 TAC §49.702

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking au-

thority; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The proposed amendments affect Texas Government Code, §531.0055, §531.021, and Chapter 531, Subchapter A-1, and Texas Human Resources Code, §32.021.

§49.702. Application Denial Period.

(a) If HHSC decides not to offer a standard contract to a contractor [~~does not qualify for a standard contract~~], as described in §49.561 [~~§49.209~~] of this chapter (relating to HHSC Does Not Offer a Standard Contract), HHSC sets an application denial period for the contractor or controlling person of the contractor that applies:

(1) to all programs and services; and

(2) for a period of time determined by HHSC, but no less than 12 [~~24~~] months after the date the previous [~~provisional~~] contract expires [~~ends~~].

[~~(b) If a contractor qualifies for a standard contract, as described in §49.209 of this chapter, but the contractor refuses a standard contract at that time, HHSC sets an application denial period for the contractor or controlling person of the contractor that applies:~~]

[~~(1) to the same program or service as the provisional contract; and~~]

[~~(2) for 12 months after the date the provisional contract ends.~~]

(b) [~~(c)~~] If HHSC terminates a [~~provisional or standard~~] contract for the contractor's failure to provide services for 12 consecutive months, as required by §49.534(a)(2)(A) of this chapter (relating to Termination of Contract by HHSC), HHSC sets an application denial period for the contractor or controlling person of the contractor that applies:

(1) to the same program or service as the terminated [~~provisional or standard~~] contract; and

(2) for 12 months after the date of termination.

(c) [~~(d)~~] If HHSC terminates a [~~provisional or standard~~] contract for a reason other than the contractor's death [~~of the contractor~~] or the contractor's failure to provide services for 12 consecutive months [~~other than the reason described in subsection (c) of this section~~], HHSC sets an application denial period for the contractor or controlling person of the contractor that applies:

(1) to all programs and services; and

(2) for a period of time determined by HHSC, but no less than 12 months after the date of termination.

(d) [~~(e)~~] If a contractor does not enter into a standard contract or terminates its [~~a provisional or standard~~] contract in accordance with the contract, including §49.551 of this chapter (relating to Contractor Terminating Contract or Not Entering into a Standard Contract) [~~(relating to Termination of Contract by Contractor)~~], for a reason other than a change of ownership or change of legal entity, HHSC sets an application denial period for the contractor or controlling person of the contractor that applies:

(1) to the same service or program as the terminated or expired [~~provisional or standard~~] contract; and

(2) for a period of time determined by HHSC, but no less than 12 months after the date the contract terminated or expired [~~of termination~~].

(e) [~~(f)~~] If a contractor does not enter into a standard contract or terminates a [~~provisional or standard~~] contract not in accordance with the contract, including §49.551 of this chapter, HHSC sets an application denial period for the contractor or controlling person of the contractor that applies:

(1) to all programs and services; and

(2) for a period of time determined by HHSC, but no less than 12 months after the date the contract terminated or expired [~~of termination~~].

(f) [~~(g)~~] If a contractor submits a provisional contract application to HHSC after the expiration of an application denial period described in subsections (a) - (e) [~~(a) - (f)~~] of this section, HHSC may deny the contract application for a reason described in §49.207 of this chapter (relating to Provisional Contract Application Denial).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2020.

TRD-202003584
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-5609

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 705. ADULT PROTECTIVE SERVICES

The Department of Family and Protective Services (DFPS) proposes new §§705.101, 705.103, 705.105, 705.107, 705.301, 705.303, 705.501, 705.701, 705.703, 705.705, 705.901, 705.903, 705.1101, 705.1103, 705.1301, 705.1303, 705.1305, 705.1307, 705.1309, 705.1311, 705.1501, 705.1503, 705.1505, 705.1507, 705.1509, 705.1511, 705.1513, 705.1515, 705.1517, 705.1519, 705.1521, 705.1523, 705.1525, 705.1527, 705.1529, 705.1531, 705.1533, 705.1901, 705.1903, 705.1905, 705.1907, 705.1909, 705.1911, 705.1913, 705.1915, 705.1917, 705.1919, 705.1921, 705.1923, and 705.1925; the repeal of §§705.1001, 705.1003, 705.1005, 705.1007, 705.1009, 705.1011, 705.2101, 705.2103, 705.2105, 705.2107, 705.3101, 705.3102, 705.4101, 705.4103, 705.4105, 705.4107, 705.4109, 705.4111, 705.5101, 705.6101, 705.7101, 705.7103, 705.7105, 705.7107, 705.7109, 705.7111, 705.7113, 705.7115, 705.7117, 705.7119, 705.7121, 705.7123, 705.8101, and 705.9001 in 40 TAC Chapter 705, concerning Adult Protective Services.

BACKGROUND AND PURPOSE

The purpose of the rule changes is as follows:

First, these changes update the rules to reflect the current scope and authority of the Adult Protective Services (APS) program as a result of Senate Bill (SB) 200, 84th Legislature, R.S. (2015) and the resulting transfer of the former APS Provider Investigations program to the Health and Human Services Commission (HHSC). The rules in Title 40, Texas Administrative Code, Chapter 705 contained many terms and provisions that pertained to

both the APS program and the former APS Provider Investigations program. The proposed changes make the rules applicable to only the APS program.

The proposed changes include copying the Employee Misconduct Registry (EMR) rules from 40 TAC, Chapter 711, Subchapter O, into the APS Chapter, 40 TAC Chapter 705, with minor updates to reflect the legislative transfer of the Provider Investigations program to HHSC. While the changes appear far-reaching, they simply involve moving the rules to the APS Chapter and making minor edits to reflect the current structure of the APS program. As the rules in Subchapter O apply to both the APS program at DFPS and the Provider Investigations program at HHSC, HHSC will be transferring the rules to Title 26 in a separate rule packet.

Additionally, the rules are being reviewed in compliance with Texas Government Code section 2001.039 which requires agencies to review rules every four years and readopt, readopt with amendments, or repeal. Except for 40 TAC section 705.2103, all rules in 40 TAC Chapter 705 are due for rule review. As a result, the rules are being reorganized for clarity and to better align with the practice and structure of the APS program and its investigations. There is extensive repeal and renumbering. However, most of the updates are organizational, non-substantive, and reflect minor changes, including using plain language and making the rules clearer for the public.

More substantive changes have been made to the definitions of abuse, neglect, and exploitation. Currently, Human Resources Code (HRC) section 48.002(a)(2),(3),(4) provides definitions of abuse, neglect and exploitation; HRC section 48.002(c) also gives APS authority to adopt definitions of abuse, neglect, and exploitation as an alternative to the definitions found in section 48.002(a). In FY2012, APS used this authority to expand its definitions in rule. While this expansion allowed APS to incorporate paid caretakers into its definitions, it also led to some overlap between definitions of physical abuse, emotional abuse, and neglect. This overlap caused confusion for staff when conducting investigations. The differing statute and rule definitions also caused some confusion for providers and the general public. In the proposed rules, APS has clarified and simplified definitions for abuse, neglect, and exploitation while still capturing the intent and mirroring the definitions found in statute.

Finally, proposed §705.1923 more specifically implements HRC section 48.102 (Reports of Investigations in Schools), which requires the adoption of rule concerning who receives APS investigation reports related to alleged maltreatment of an adult with a disability by school personnel. While rules regarding release of the report were covered generally in current subchapter M, relating to Confidentiality and Release of Records (now proposed as new Subchapter S), the proposed rules specifically and directly contain a rule pertaining to who receives copies of reports of investigations in schools.

SECTION-BY-SECTION SUMMARY

New §705.101 updates the definitions of terms used during an APS case. The new rule combines terms in former rules §§705.1001, 705.7105, 711.1402, and 711.1407 and incorporates most terms with either no changes or minor clarifying changes. It includes the term 'caretaker' and 'designated perpetrator' with updates to the terminology. Specifically, the rule combines the definitions of paid caretaker into the caretaker definition as both caretaker and paid caretaker assume responsibility for the client and there is no need to distinguish based on monetary compensation. In addition, the definition of 'designated perpetrator' is updated to reflect that such perpetrator may be eligible for the EMR registry. It also adds several new definitions including those for goods, HHSC, HHSC PI, release hearing, and services.

New §705.103 consolidates into one rule the definitions from former §705.1003, §705.1005, and §705.1007 by combining the definitions of sexual abuse, physical abuse, emotional abuse and verbal abuse into one definition of abuse to closely mirror the statutory definition of abuse found in Human Resources Code (HRC) §48.002(a)(2).

New §705.105 combines the definitions of self-neglect (§705.1009(a)) and caretaker neglect (§705.1009(b)) into one comprehensive definition of neglect that closely mirrors the statutory definition of neglect in HRC §48.002(a)(4).

New §705.107 updates the definition of financial exploitation. It removes theft from the definition of financial exploitation; theft is not part of the statutory definition of exploitation in HRC §48.002(3). It also removes the description of informed consent from rule, but it remains in policy.

New §705.301 was renumbered as part of the rule review and incorporates the content from former §705.5101 with only non-substantive grammatical changes.

New §705.303 was renumbered as part of the rule review and incorporates the content from former §705.8101 with only grammatical changes for clarity.

New §705.501 was renumbered as part of the rule review and incorporates and clarifies the content from former §705.2101. The new rule clarifies that allegations, not investigations, are prioritized. It also clarifies in rule that APS establishes timeframes for conducting the initial face-to-face contact with the alleged victim based on the priority assigned to the allegation(s).

New §705.701 was renumbered as part of the rule review and incorporates the content from former §705.2103. The new rule replaces "individual receiving services" with "an alleged victim who is also the subject of an investigation conducted by HHSC PI" because an individual receiving services as defined in 26 TAC §711.3(24) could be a minor.

New §705.703 was renumbered as part of the rule review and incorporates the content from former §705.2105 with grammatical edits for clarity and to remove the reference to HRC §48.205 which is more applicable to the content of new §705.705 and added there instead.

New §705.705 was renumbered as part of the rule review and incorporates the content from former §705.2107 with the addition of a citation to HRC §48.205.

New §705.901 was renumbered as part of the rule review and incorporates the content from former §705.3101 with clarifying edits. The new rule clarifies that APS is not limited to providing literature on family violence to an alleged victim in only Spanish or English, but provides written information, as available, in any language the victim prefers.

New §705.903 was renumbered as part of the rule review and incorporates the content from former §705.3102 with non-substantive grammatical changes.

The proposed repeals of §§705.1001 - 705.1011 delete rules that are no longer necessary because the relevant content is be-

ing incorporated into and renumbered as new rules §§705.101, 705.103, 705.105, and 705.107.

New §705.1101 incorporates the content from former §705.6101 (a) through (c) with grammatical edits for clarity and the transfer of content from subsection (d) into its own new rule, new §705.1103.

New §705.1103 incorporates the content from former §705.6101 (d) with clarification that the rule specifically pertains to supervisory consultations regarding cases.

New §705.1301was renumbered as part of the rule review and incorporates the content from former §705.4101 without change.

New §705.1303 was renumbered as part of the rule review and incorporates the content from former §705.4103 with updated internal citations.

New §705.1305 was renumbered as part of the rule review and incorporates the content from former §705.4105 without changes.

New §705.1307 was renumbered as part of the rule review and incorporates the content from former §705.4107 without changes.

New §705.1309 was renumbered as part of the rule review and incorporates the content from former §705.4109 without changes.

New §705.1311 was renumbered as part of the rule review and incorporates the content from former §705.4111 without changes.

New §705.1501 through §705.1533 were renumbered as part of the rule review and incorporate relevant content from Subchapter O, 40 TAC 711, pertaining to the EMR as applicable to APS.

New §705.1501 was renumbered as part of the rule review and incorporates content from §711.1401 except for that which is duplicative of the content of the definition of EMR in new §705.101. It also makes clear the applicability to APS investigations.

New §705.1503 was renumbered as part of the rule review and incorporates the content from §711.1403 with updated internal citation.

New §705.1505 was renumbered as part of the rule review and incorporates relevant content from the definitions located in former §711.1402 and §711.1406 that were not transferred into new Subchapter A Definitions. It does not include the content applicable to only the HHSC Provider Investigations program.

New §705.1507 was renumbered as part of the rule review and incorporates the content from §711.1408 and replaces "individual receiving agency services" with "alleged victim or client" to make it appropriate to the terms used by APS. It also updates the internal citation.

New §705.1509 was renumbered as part of the rule review and incorporates the content from §711.1413 and specifies "financial exploitation" instead of "exploitation".

New §705.1511 was renumbered as part of the rule review and incorporates the content from §711.1414 and adds clarifying language to more closely mirror the language in the Notice of Finding.

New §705.1513 was renumbered as part of the rule review and incorporates the content from §711.1415 with updated internal citation.

New §705.1515 was renumbered as part of the rule review and incorporates the content from §711.1417 with minor edits for clarity including changing "certified mailing" to "certified envelope" and "regular mailing" to "first-class envelope".

New §705.1517 was renumbered as part of the rule review and incorporates the content from §711.1419 with a change of the word "prior" to "before".

New §705.1519 was renumbered as part of the rule review and incorporates the content from §711.1421 with non- substantive changes.

New §705.1521 was renumbered as part of the rule review and incorporates the content from §711.1423 with a minor edit for clarity and consistency with terminology (changes "working days" to "business days" to mirror terminology in §705.1515).

New §705.1523 was renumbered as part of the rule review and incorporates the content from §711.1425 with updated internal citation.

New §705.1525 was renumbered as part of the rule review and incorporates the content from §711.1426 with minor edits; the term "Final Order" replaces "Hearing Order" and an internal citation is updated.

New §705.1527 was renumbered as part of the rule review and incorporates the content from §711.1427 without change.

New §705.1529 was renumbered as part of the rule review and incorporates the content from §711.1429 with minor updates; the term "HHSC" replaces "DADS" and "dispositive order that may become final (Final Order)" replaces "Hearing Order", and an internal citation is updated.

New §705.1531 was renumbered as part of the rule review and incorporates the content from §711.1431. Language was clarified regarding removal of an employee's name from the registry pending final disposition on judicial review.

New §705.1533 was renumbered as part of the rule review and incorporates the content from §711.1432; the title and subsections of the rule were changed for clarity to incorporate DFPS action when an employee's administrative case is fully resolved or has reached final disposition.

New §705.1901 was renumbered as part of the rule review and incorporates the content from former §705.7101 with non-substantive changes.

New §705.1903 was renumbered as part of the rule review and incorporates the content from former §705.7103 with non-substantive changes.

New §705.1905 was renumbered as part of the rule review and incorporates content from former §705.7105 (the definitions for case records and investigation records), removes duplicative terms, and changes the term "exploitation" to "financial exploitation".

New §705.1907 was renumbered as part of the rule review and incorporates the content from former §705.7107, removes non-applicable content concerning clients who are minors, restructures the lists for clarity, and changes "exploitation" to financial exploitation".

New §705.1909 was renumbered as part of the rule review and incorporates the content from former §705.7109 with a change from "exploitation" to financial exploitation".

New §705.1911 was renumbered as part of the rule review, incorporates the applicable content from former §705.7111 and removes the reference to §711.401.

New §705.1913, which was renumbered as part of the rule review, incorporates the content from former §705.7113, with minor updates to terminology used in the rule to make the rules clearer and easier for the public to understand.

New §705.1915 was renumbered as part of the rule review and incorporates the content from former §705.7115 with plain language edits.

New §705.1917 was renumbered as part of the rule review and incorporates the content from former §705.7117 with an internal citation updated.

New §705.1919 was renumbered as part of the rule review and incorporates the content from former §705.7119 with a minor plain language edit.

New §705.1921 was renumbered as part of the rule review and incorporates the content from former §705.7121 with minor edits for plain language.

New §705.1923 explains who receives copies of reports of investigations in schools pursuant to HRC §48.102.

New §705.1925 was renumbered as part of the rule review and incorporates the content from former §705.7123 with plain language edits.

The proposed repeals of §§705.2101 - 705.2107 delete rules as the content is being incorporated into new rules that are renumbered to §§705.501, 705.701, 705.703 and 705.705.

The proposed repeals of §705.3101 and §705.3102 delete rules as the content is included in new rules §705.901 and §705.903.

The proposed repeals of §§705.4101 - 705.4111 delete rules and the content is being incorporated into new rules that are renumbered to §§705.1301, 705.1303, 705.1305, 705.1307, 705.1309, 705.1311, and 705.1313.

The proposed repeal of §705.5101 deletes the rule because the rule content was updated into renumbered new §705.301.

The proposed repeal of §705.6101 deletes the rule because the rule content was updated for clarity into renumbered new §705.1101.

The proposed repeals of §§705.7101 - 705.7123 deletes rules and the content is being incorporated into new rules that are renumbered to §§705.1901, 705.1903, 705.1905, 705.1907, 705.1909, 705.1911, 705.1913, 705.1915, 705.1917, 705.1919, 705.1921, and 705.1925.

The proposed repeal of §705.8101 deletes the rule because the rule content was updated into renumbered new §705.303.

The proposed repeal of §705.9001 deletes the rule because the rule content is now obsolete.

FISCAL NOTE:

STATE AND LOCAL GOVERNMENT

David Kinsey, Chief Financial Officer of DFPS, has determined, under Government Code section 2001.024(a)(4), that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined, under Government Code section 2001.0221, that during the first five years that the proposed rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation will not affect the number of employee positions;

(3) implementation will not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rules will not affect fees paid to the agency;

(5) the proposed rule amendments will create new regulations to the extent that the content from the rules in 40 TAC 711, Subchapter O is being incorporated with edits into new rules in 40 TAC 705;

(6) the proposed rule amendments will not expand, limit, or repeal an existing regulation;

(7) the proposed rule amendments will not increase the number of individuals subject to the rule; and

(8) the proposed rule amendments will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Mr. Kinsey has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not apply to small or micro-businesses, or rural communities. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code section 2006.002.

PUBLIC BENEFIT AND ECONOMIC COSTS TO PERSONS

Kez Wold, Associate Commissioner for Adult Protective Services, has determined, under Government Code section 2001.024(a)(5) that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the section will be an update of the current rules to reflect changes to the department's statutory authority and a more efficient and well-organized rule chapter. There are no anticipated economic costs to persons who are required to comply with these sections as proposed.

IMPACT ON LOCAL ECONOMY

There is no anticipated negative impact on local economy, and therefore a local employment impact statement is not required under Government Code section 2001.022 or 2001.024(a)(6).

COSTS TO REGULATED PERSONS/COST IN-COST OUT

Pursuant to subsection (c)(7) of Texas Government Code, §2001.0045, the provisions of section 2001.0045 do not apply to a rule that is adopted by the Department of Family and Protective Services.

ENVIRONMENTAL REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, section 2001.0225, and therefore, neither an environmental regulatory analysis nor impact statement is required.

TAKINGS IMPACT ASSESSMENT

DFPS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments and questions on this proposal must be submitted within 30 days of publication of the proposal in the *Texas Register.* Electronic comments and questions may be submitted to Angela Medina, APS Policy Manager at Angela.Medina@dfps.state.tx.us. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services 19R11, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

SUBCHAPTER A. DEFINITIONS

40 TAC §§705.101, 705.103, 705.105, 705.107

STATUTORY AUTHORITY

These rules are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed rules.

§705.101. How are the terms in this chapter defined?

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

(1) Administrative law judge--An attorney who serves as a hearings examiner in a due process hearing, including a release hearing or Employee Misconduct Registry (EMR) hearing.

(2) Adult--A person aged 18 or older, or an emancipated minor.

(3) Adult with a disability--A person aged 18 or older, or an emancipated minor, with a physical, mental, or developmental disability that substantially impairs the person's ability to adequately provide for his or her own care or protection.

(4) Allegation--An assertion that an alleged victim is in a state of or at risk of harm due to abuse, neglect, or financial exploitation.

(5) Alleged perpetrator--A person who is reported to be responsible for the abuse, neglect, or financial exploitation of an alleged victim.

(6) Alleged victim--An adult with a disability or an adult aged 65 or older who has been reported to APS to be in a state of or at risk of harm due to abuse, neglect, or financial exploitation.

(7) Alleged victim/perpetrator--An adult with a disability or an adult aged 65 or older who has been reported to APS to be in a state of or at risk of self-neglect.

(8) APS--Adult Protective Services, a division of DFPS.

(9) Capacity to consent to protective services--Having the mental and physical ability to understand the services offered and to accept or reject those services knowing the consequences of the decision.

(10) Caretaker--

(A) A guardian, representative payee, or other person who by act, words, or course of conduct has acted so as to cause a reasonable person to conclude that the person has accepted the responsibility for protection, food, shelter, or care for an alleged victim;

(B) An employee of a home and community support services agency (HCSSA) providing non-Medicaid services to an alleged victim; or

(C) A person, including a family member, privately hired and receiving monetary compensation to provide personal care services, as defined in Texas Health and Safety Code, §142.001(22-a), to an alleged victim.

(11) Client--An alleged victim or alleged victim/perpetrator who has been determined by a validated finding to be in need of protective services. The alleged victim does not have to meet financial eligibility requirements.

(12) Commissioner--The commissioner of DFPS or the commissioner's designee.

(13) Designated perpetrator--An alleged perpetrator who has been determined by a validated finding to have abused, neglected, or financially exploited a client. A designated perpetrator may be eligible for inclusion on the Employee Misconduct Registry, when the abuse, neglect, or financial exploitation meets the definition of reportable conduct.

(14) Designated victim--An alleged victim with a valid abuse, neglect, or financial exploitation finding.

(15) Designated victim/perpetrator--An alleged victim/perpetrator with a validated self-neglect finding.

(16) DFPS--Department of Family and Protective Services.

(17) Emancipated minor--A person under 18 years of age who has the power and capacity of an adult. This includes a minor who has had the disabilities of minority removed by a court of law or a minor who, with or without parental consent, has been married. Marriage includes common-law marriage.

(18) Emergency protective services--Services provided to an alleged victim who is also the subject of an investigation conducted by HHSC PI under Texas Human Resources Code, Chapter 48, Subchapter F, to alleviate danger of serious harm or death.

(19) Emotional harm--A highly unpleasant mental reaction with observable signs of distress, such as anguish, grief, fright, humiliation, or fury.

(20) Employee Misconduct Registry (EMR)--A database established under Texas Health and Safety Code, Chapter 253, and maintained by HHSC that contains the names of persons who have committed reportable conduct. A person whose name is recorded in the EMR is prohibited by law from working for certain facilities or agencies in Texas, as provided under Texas Health and Safety Code, Chapter 253.

(21) EMR hearing--A due process hearing offered to a person who has been found to have committed reportable conduct for the purpose of appealing the finding of reportable conduct as well as the underlying finding of abuse, neglect, or financial exploitation.

(22) Goods--Tangible objects such as food, clothing, shelter and other items necessary to meet one's basic needs.

(23) HHSC--Health and Human Services Commission.

(24) HHSC PI--Health and Human Services Commission Regulatory Services Division Provider Investigations.

(25) Home and community support services agency (HCSSA)--An agency licensed under Texas Health and Safety Code, Chapter 142.

(26) Intimidation--Behavior by actions or words creating fear of physical harm, death, or abandonment.

(27) Ongoing relationship--A personal relationship that includes:

(A) frequent and regular interaction;

(B) a reasonable assumption that the interaction will continue; and

(C) an establishment of trust, beyond a commercial or contractual agreement.

(28) Physical harm--Physical pain, injury, illness, or any impairment of physical condition.

(29) Protective services--The services furnished by DFPS or by another protective services agency to an APS client, designated victim, or designated victim/perpetrator, or to that person's relative or caretaker if DFPS determines the services are necessary to prevent the client, designated victim, or designated victim/perpetrator from being in or returning to a state of abuse, neglect, or financial exploitation. These services may include social casework, case management, and arranging for psychiatric and health evaluation, home care, day care, social services, health care, respite services, and other services consistent with Texas Human Resources Code, §48.002. The term does not include the investigation of an allegation of abuse, neglect, or financial exploitation.

(30) Purchased client services--A type of protective services provided in accordance with Texas Human Resources Code, §48.002(a)(5), including, but not limited to, emergency shelter, medical, and psychiatric assessments, in-home care, residential care, heavy housecleaning, minor home repairs, money management, transportation, emergency food, medication, and other supplies.

(31) Release hearing--A formal due process hearing conducted by an administrative law judge. A release hearing provides a designated perpetrator with an opportunity to appeal DFPS's decision to release information about him or her to persons or entities outside DFPS, except for information released as required or allowed by state or federal law or in accordance with this chapter.

(32) Report--An allegation of abuse, neglect, or financial exploitation, as described in Texas Human Resources Code, §48.002, which is made under Texas Human Resources Code, §48.051(a).

(33) Reporter--A person who makes a report to DFPS about a situation of alleged abuse, neglect, or financial exploitation of an alleged victim.

(34) Serious harm--In danger of sustaining significant physical harm or death; or danger of imminent impoverishment or deprivation of basic needs.

(35) Services--Activities provided by others, including, but not limited to, cooking, cleaning, money management, medical care, or mental health care.

(36) Substantially impairs--When a disability grossly and chronically diminishes an adult's physical or mental ability to live independently or provide self-care as determined through observation, diagnosis, evaluation, or assessment.

(37) Sustained perpetrator--A designated perpetrator whose validated finding of abuse, neglect, or financial exploitation of a designated victim has been sustained by an administrative law judge in a due process hearing, including a release hearing or Employee Misconduct Registry (EMR) hearing, or if the designated perpetrator has waived the right to a hearing.

(38) Unreasonable confinement--An act that results in a forced isolation from the people one would normally associate with, including friends, family, neighbors, and professionals; an inappropriate restriction of movement; or the use of any inappropriate restraint.

§705.103. How is abuse defined?

In this chapter, when the alleged perpetrator is a caretaker, family member, or other person who has an ongoing relationship with the alleged victim, abuse is defined as:

(1) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to the alleged victim; or

(2) sexual abuse of the alleged victim, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code, Section 21.08, (indecent exposure) or Texas Penal Code, Chapter 22, Assaultive Offenses.

§705.105. How is neglect defined?

In this chapter, neglect is defined as the failure to provide for oneself the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.

§705.107. How is financial exploitation defined?

In this chapter, when an alleged perpetrator is a caretaker, family member, or other person who has an ongoing relationship with the alleged victim, financial exploitation is defined as the illegal or improper act or process of the alleged perpetrator using, or attempting to use, the resources of the alleged victim, including the alleged victim's Social Security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the alleged victim.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003527
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER C. APS PROGRAM OVERVIEW

40 TAC §705.301, §705.303

STATUTORY AUTHORITY

These rules are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed new sections implement the requirements of Texas Government Code section 2001.039 regarding rule re-

view as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed rules.

§705.301. What is DFPS's policy on training APS staff?

(a) DFPS provides the professional development of all APS staff through training and education programs in compliance with Texas Human Resources Code, §40.035, and Chapter 702, Subchapter G of this title (relating to Training and Education).

(b) APS training incorporates actual case examples that are realistic and indicative of staff's current or prospective duties.

§705.303. How does DFPS educate the public about APS?

(a) DFPS conducts a statewide public awareness campaign to educate the public regarding abuse, neglect, and financial exploitation of alleged victims and to reduce the incidences of maltreatment involving adults with disabilities and adults aged 65 or older.

(b) Based on available funding, DFPS utilizes a selection of:

(1) public service announcements;

(2) program brochures and literature;

(3) a prevention website; and

(4) speaking engagements, by enlisting the assistance of community organizations.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003528
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER E. ALLEGATION PRIORITIES

40 TAC §705.501

STATUTORY AUTHORITY

These rules are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed rules.

§705.501. How are allegations prioritized?

(a) APS assigns the following priorities to reported allegations:

(1) Priority I--Allegation that the alleged victim is in a state of serious harm or is in danger of death from abuse or neglect.

(2) Priority II--Allegation that the alleged victim is abused, neglected, or financially exploited and, as a result, is at risk of serious harm.

(3) Priority III--Allegation that the alleged victim is in a state of abuse or neglect when the severity and immediacy of the allegation do not meet the definitions in paragraphs (1) or (2) of this subsection.

(4) Priority IV--Allegation that the alleged victim is financially exploited when there is no serious harm.

(b) APS establishes the timeframe for conducting the initial face-to-face contact with the alleged victim based on the priority assigned to the allegation(s).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003529
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER G. ELIGIBILITY

40 TAC §§705.701, 705.703, 705.705

STATUTORY AUTHORITY

These rules are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed rules.

§705.701. Who is eligible for emergency protective services?

Emergency protective services may be provided to an alleged victim who is also the subject of an investigation conducted by HHSC PI and:

(1) receives services from a provider as defined by Texas Human Resources Code, §48.251(a)(9); or

(2) lives in a residence that is owned, operated or controlled by a provider of home and community-based services under the home and community-based services waiver program described by Texas Government Code, §534.001(11)(B), regardless of whether the alleged victim is receiving services under that waiver program from the provider.

§705.703. Who is eligible for purchased client services?

Purchased client services may be provided to an alleged victim who is receiving protective services and has a service plan developed by APS

indicating that purchased client services are needed to remedy abuse, neglect, or financial exploitation.

§705.705. When are purchased client services available?

(a) Other state and local resources must be used before purchased client services are expended in accordance with Texas Human Resources Code, §48.205.

(b) Not all purchased client services are available in all geographic areas of the state. DFPS may limit the units of service or length of time that clients can receive purchased client services, based upon service plans, availability of funds, and availability of service providers.

(c) If the region does not have sufficient funds to provide purchased client services to all eligible clients, the client will not be able to receive purchased client services at the time the client is determined eligible. Clients who are still in need of purchased client services when services are available will be given priority based upon the date of the service plan indicating the need for purchased client services.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003530
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER I. FAMILY VIOLENCE

40 TAC §705.901, §705.903

STATUTORY AUTHORITY

These rules are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed rules.

§705.901. What actions does APS perform when alleged victims are also victims of family violence?

(a) When APS staff validates an allegation that an alleged victim is a victim of family violence as specified in Texas Family Code, §71.004, APS staff:

(1) documents that the alleged victim is a victim of family violence; and

(2) provides the alleged victim with written information in the alleged victim's preferred language, as available, concerning community services.

(b) Statistical compilations of the documented findings are included in DFPS's annual report.

§705.903. Can DFPS apply for protective orders?

When APS staff validates an allegation that an alleged victim is a victim of family violence as specified in Texas Family Code, §71.004, DFPS may apply for a protective order to protect the victim. Before DFPS files the protective order, APS staff contacts the victim and a non-abusive adult member of the household, if available:

(1) to notify them of DFPS's intent to file a protective order; and

(2) to request assistance in developing a safety plan for the protection of the victim and any non-abusive household members.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003531
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER K. INVESTIGATIONS

40 TAC §705.1101, §705.1103

STATUTORY AUTHORITY

These rules are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed rules.

§705.1101. What assessments does APS use?

(a) APS uses a series of three assessments.

(1) Safety assessment. When APS investigates, APS uses a safety assessment to determine if the alleged victim is in imminent risk of abuse, neglect, or financial exploitation, or is in a state of abuse, neglect, or financial exploitation and needs protective services. A safety assessment helps APS determine current danger factors and if immediate intervention is necessary to mitigate them.

(2) Risk of recidivism assessment: If APS validates abuse, neglect, or financial exploitation, APS uses a risk of recidivism assessment to help determine whether the client is at low, moderate, or high risk of being an alleged victim within the next 12 months.

(3) Strengths and needs assessment: If APS validates abuse, neglect, or financial exploitation and provides protective services, APS uses a strengths and needs assessment to help develop a service plan appropriate to the client's needs.

(b) Each assessment is comprehensive, and at a minimum, assesses:

(1) environmental conditions;

(2) financial condition;

(3) physical, medical, and mental health conditions;

(4) social interaction and support; and

(5) need for legal intervention.

§705.1103. When must an APS caseworker consult with a supervisor regarding a case?

An APS caseworker must consult with a supervisor regarding a case when:

(1) abuse, neglect, or financial exploitation is validated;

(2) the client has a current threat to his or her life or physical safety; and

(3) the client refuses to accept services or withdraws a previous acceptance of services.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003532
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER M. RELEASE HEARINGS

40 TAC §§705.1301, 705.1303, 705.1305, 705.1307, 705.1309, 705.1311

STATUTORY AUTHORITY

These rules are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed rules.

§705.1301. How are terms in this subchapter defined?

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

(1) Emergency--Abuse, neglect, or financial exploitation which, without immediate intervention, would result in a child or an adult with a disability or aged 65 or older being in a state of or at risk of serious harm.

(2) Release--The release of data outside of DFPS without the designated perpetrator's consent, except for data released as allowed by law or in accordance with this chapter.

§705.1303. Does the designated perpetrator have the right to appeal?

(a) When APS staff validates an allegation of abuse, neglect, or financial exploitation against a designated perpetrator and an entity or employer (such as a contracting agency or senior center) allows such designated perpetrator to have access to adults with disabilities, adults aged 65 or older, or children, then the APS caseworker may notify the entity of the findings by complying with this subchapter. If the findings are to be released to any entity or employer, the designated perpetrator must be given prior written notification, except in emergencies, and an opportunity to request an Administrative Review of Investigative Findings and a hearing before the State Office of Administrative Hearings.

(b) If the designated perpetrator is an employee as defined in §705.1505 of this chapter (relating to How are the terms in this subchapter defined?) and subject to placement on the Employee Misconduct Registry established under Texas Health and Safety Code, Chapter 253, the perpetrator may request a hearing as described in Subchapter O of this chapter (relating to Employee Misconduct Registry).

(c) A designated perpetrator who is offered an EMR hearing under subsection (b) of this section may not also request a release hearing, as described in this chapter, relating to the same allegations of abuse, neglect, or financial exploitation.

(d) DFPS may elect to offer due process for an emergency release in an EMR hearing, as described in Subchapter O of this chapter (relating to Employee Misconduct Registry).

§705.1305. How is the designated perpetrator notified of the intent to release?

(a) The caseworker must give written notification to each designated perpetrator if:

(1) allegations of abuse, neglect, or financial exploitation are validated;

(2) the findings are to be released outside of DFPS to an entity or employer which allows the designated perpetrator access to adults with disabilities, adults aged 65 or older, or children; and

(3) the designated perpetrator, as a result of the release, may be denied a right or privilege, such as employment.

(b) Written notification must include:

(1) the findings to be released;

(2) the entity or employer to which the findings will be released;

(3) the designated perpetrator's right to request a copy of the investigation documentation, from which the reporter's name has been removed;

(4) a warning that the request for a copy of the investigation documentation may be denied if release of the investigation documentation would jeopardize an ongoing criminal investigation, or if the attorney representing DFPS in a lawsuit has determined that the information should be withheld;

(5) DFPS's decision that an emergency exists and that the findings have already been released, if applicable;

(6) the designated perpetrator's right to an administrative review and a release hearing to appeal the findings, and a warning that the findings will be released without the designated perpetrator's consent if the designated perpetrator does not request an appeal and the findings have not already been released in an emergency;

(7) the requirement that the designated perpetrator must request the appeal in writing and that the request must be postmarked within 20 days after the official notice is mailed by DFPS; and

(8) a statement that the designated perpetrator is responsible for keeping DFPS timely informed of the designated perpetrator's current address and to immediately notify DFPS of any change of address or contact information throughout the investigation and any period of time during which an appeal is pending.

§705.1307. What is the designated perpetrator's role during an administrative review?

(a) The designated perpetrator may:

(1) appear in person at the administrative review and may be accompanied by a representative;

(2) submit written material that is relevant to the case; or

(3) have a certified interpreter provided by DFPS if the designated perpetrator does not speak English or is deaf, or may provide his own interpreter.

(b) The designated perpetrator is responsible for:

(1) any costs incurred for the review, except for interpreter services provided by DFPS; and

(2) keeping DFPS timely informed of his current address at all times during the review period.

§705.1309. Are administrative reviews open to the general public?

Administrative reviews are closed to the general public consistent with the required statutory confidentiality of DFPS records. Only the designated perpetrator and the designated perpetrator's representative may be present.

§705.1311. Who is notified of the confidential decision?

If the final outcome of the appeal or any subsequent litigation alters or reverses the APS findings, everyone notified of the original findings must be notified of the final decision. Notification may be in the same form as the original notification. The decision is confidential and may be disclosed only as allowed by law or this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003533
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER O. EMPLOYEE MISCONDUCT REGISTRY

40 TAC §§705.1501, 705.1503, 705.1505, 705.1507, 705.1509, 705.1511, 705.1513, 705.1515, 705.1517, 705.1519, 705.1521, 705.1523, 705.1525, 705.1527, 705.1529, 705.1531, 705.1533

STATUTORY AUTHORITY

These rules are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed rules.

§705.1501. What is the purpose of this subchapter?

The purpose of this subchapter is to implement Texas Human Resources Code, Chapter 48, Subchapter I (relating to the Employee Misconduct Registry), as it applies to APS investigations.

§705.1503. To which investigations does this subchapter apply?

(a) This subchapter applies to APS investigations involving an employee as defined in §705.1505 of this subchapter (relating to How are the terms in this subchapter defined?).

(b) Notwithstanding subsection (a) of this section, a certified nurse aide who commits reportable conduct while working for an agency is eligible to be reported to the EMR, as provided by Texas Health and Safety Code, §253.001(3).

§705.1505. How are the terms in this subchapter defined?

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Agency--A home and community support services agency licensed under Texas Health and Safety Code, Chapter 142.

(2) Employee--A person who:

(A) works for an agency;

(B) provides personal care services, active treatment, or any other services to an alleged victim; and

(C) is not licensed by the state to perform the services the person performs for the agency.

§705.1507. How is reportable conduct defined for the purpose of this subchapter?

(a) Reportable conduct as defined in Texas Human Resources Code, §48.401, includes:

(1) abuse or neglect that causes or may cause death or harm to an alleged victim or client;

(2) sexual abuse of an alleged victim or client;

(3) financial exploitation of an alleged victim or client in an amount of $25 or more; and

(4) emotional, verbal, or psychological abuse that causes harm to an alleged victim or client.

(b) For purposes of subsection (a) of this section, the terms abuse, neglect, sexual abuse, and financial exploitation have the meanings provided in Subchapter A of this chapter (relating to Definitions).

(c) For purposes of subsection (a)(1) of this section the term harm means:

(1) a significant injury or risk of significant injury, including a fracture, dislocation of any joint, internal injury, a contusion larger than 2 and 1/2 inches, concussion, second or third degree burn, or any laceration requiring sutures;

(2) an adverse health effect that results or is at risk of resulting from failure to receive medications in the amounts or at the times prescribed; or

(3) any other harm or risk of harm that warranted, or would reasonably be expected to have warranted, medical treatment or hospitalization.

(d) For purposes of subsection (a)(4) of this section, the term harm means substantial harm as evidenced by observable signs of substantial physical or emotional distress or as diagnosed by an appropriate medical professional.

§705.1509. What notice does DFPS provide to an employee before the employee's name is submitted to the Employee Misconduct Registry?

When DFPS determines that an employee committed reportable conduct, DFPS provides a written notice (Notice of Finding) to the employee. The Notice of Finding includes:

(1) a brief summary of the incident that resulted in a validated finding of abuse, neglect, or financial exploitation and a brief explanation of why the finding meets the definition of reportable conduct;

(2) a statement of the employee's right to dispute the finding by filing a request for hearing (Request for EMR Hearing) and the instructions for doing so;

(3) a statement that DFPS will submit the employee's name for inclusion in the Employee Misconduct Registry if the employee accepts the finding of reportable conduct;

(4) an explanation of how the employee may obtain a copy of the investigation records;

(5) a statement that a person whose name is recorded in the Employee Misconduct Registry is prohibited by law from working for certain facilities or agencies, as provided under Texas Health and Safety Code, Chapters 250 and 253;

(6) a statement that DFPS may determine that the situation is an emergency and that the case information or finding may be released immediately to the agency where the employee is or was employed so that the agency may take any precautions it determines necessary to protect clients;

(7) a statement that DFPS reserves the right to make an emergency release of the findings to any subsequent employer of the employee if the employee has access to similar clients;

(8) a statement that the employee is responsible for keeping DFPS timely informed of the employee's current employment and residential contact information, including addresses and phone numbers, pending the outcome of any appeal filed by the employee; and

(9) a statement that if the employee fails, without good cause, to file a timely Request for EMR Hearing, the employee will be deemed to have waived the employee's rights to dispute the finding and the employee's name will be submitted to the Employee Misconduct Registry.

§705.1511. How is the Notice of Finding provided to an employee, and who is responsible for ensuring that DFPS has a valid mailing address for an employee?

(a) The Notice of Finding is mailed to the employee's last known address by first-class mail and by certified mail, return receipt requested.

(b) If DFPS knows the employee's last known address is incorrect, or if the employee fails to provide an address, DFPS may hand-deliver the Notice of Finding to the employee. The affidavit of the person delivering the notice is proof of such notice.

(c) It is the responsibility of the employee to provide DFPS with a valid address where notice can be mailed or, if no address is available, with valid contact information, including telephone numbers. It is also the responsibility of the employee to immediately notify DFPS of any change of address or contact information throughout the investigation and pending the outcome of an EMR hearing or any appeal of an EMR hearing decision.

§705.1513. How does an employee dispute a finding of reportable conduct and what happens if the Request for EMR Hearing is not filed or not filed properly?

(a) An employee may dispute a finding of reportable conduct by submitting a Request for EMR Hearing. The Notice of Finding contains instructions for filing the Request for EMR Hearing.

(b) The employee is deemed to have accepted the finding of reportable conduct and DFPS submits the employee's name for inclusion in the Employee Misconduct Registry if the employee:

(1) does not file a Request for EMR Hearing;

(2) fails to file the Request for EMR Hearing before the deadline has passed, as provided under §705.1515 of this chapter (relating to What is the deadline for filing the Request for EMR Hearing?); or

(3) files a Request for EMR Hearing, but fails to follow the filing instructions and, as a result, DFPS does not receive the Request for EMR Hearing in a timely manner or cannot determine the matter being disputed.

§705.1515. What is the deadline for filing the Request for EMR Hearing?

(a) The employee must file the Request for EMR Hearing no later than 30 calendar days from the date the employee receives the Notice of Finding.

(b) A Notice of Finding is presumed received by the employee on the date of delivery as indicated on the certified mail return receipt. If the certified envelope is returned unclaimed, but the first-class envelope is not returned, the Notice of Finding is presumed received on the third business day following the date the notice was mailed to the employee's last known address. A personally delivered Notice of Finding is presumed received on the date of delivery as indicated on the affidavit of the person delivering the notice.

(c) If the Request for EMR Hearing is submitted by mail, the envelope must be postmarked no later than 30 days after the date the employee received the Notice of Finding. If the Request for EMR Hearing is hand-delivered or submitted by fax, the request must be received in the appropriate DFPS office by 5:00 p.m., no later than 30 days from the date the employee received the Notice of Finding.

(d) If an employee files the Request for EMR Hearing after the deadline, DFPS notifies the employee that the request was not filed by the deadline, no EMR hearing will be granted, and the employee's name will be submitted for inclusion in the Employee Misconduct Registry.

(e) If an employee disputes the fact that the Request for EMR Hearing was filed late, the employee may file a request for a telephonic hearing, to be conducted by an administrative law judge, and limited solely to the issue of whether the Request for EMR Hearing was filed on time. If, as a result of that hearing, the employee proves that the original Request for EMR Hearing was filed on or before the deadline, a separate hearing will be scheduled as soon as possible on the issue of whether the employee committed reportable conduct.

§705.1517. Is the finding of reportable conduct ever reversed without conducting a hearing?

Before a hearing, DFPS, in its sole discretion, may designate a person to conduct a review of the investigation records. If a review of the records results in a reversal of the finding of reportable conduct, DFPS will send the employee a new Notice of Finding, which will indicate that the employee's name will not be submitted to the Employee Misconduct Registry. If the review does not result in a reversal of the finding of reportable conduct, a hearing will be scheduled, as described in this subchapter.

§705.1519. When and where will the EMR hearing take place and who conducts the hearing?

(a) An EMR hearing is conducted by an administrative law judge with HHSC. The administrative law judge is responsible for scheduling the date, time, and location for the hearing. At the discretion of the administrative law judge, a pre-hearing conference may be conducted in person or by phone before the scheduling or conduct of the EMR hearing.

(b) The administrative law judge sends the parties a notice of a hearing providing the date, time, and location for the hearing, as well as the name of the administrative law judge, and how to contact the administrative law judge.

(c) The hearing is usually held in the same DFPS region where the alleged reportable conduct took place. The administrative law judge reserves the right to take all or some of the testimony at the hearing by telephone or video conference and may consider a request by any party to have the hearing conducted in a different location for good cause.

(d) If a criminal case against the employee arises because of the same reportable conduct, DFPS may postpone the EMR hearing until the criminal case resolves.

§705.1521. May an employee or DFPS request that the EMR hearing be rescheduled?

Yes. Both the employee and DFPS may request that the administrative law judge reschedule the hearing for good cause. Except in cases of emergency, the request to reschedule the hearing must be made no later than three business days prior to the hearing date. The administrative law judge must grant the request if good cause is shown.

§705.1523. May an employee withdraw a Request for EMR Hearing after it is filed?

Yes. An employee may withdraw a Request for EMR Hearing any time before the hearing is conducted. An employee who withdraws a Request for EMR Hearing is deemed to have accepted the finding of reportable conduct, and DFPS submits the employee's name for inclusion in the Employee Misconduct Registry.

§705.1525. What happens if a party fails to appear at a pre-hearing conference or a hearing on the merits?

(a) If either party fails, without good cause, to appear at a scheduled pre-hearing conference or a hearing on the merits, the administrative law judge may issue a default judgment against the party that failed to appear.

(b) A party against whom a default judgment is rendered may, within 10 calendar days of receipt of the default judgment, request a hearing on the issue of whether good cause existed for failing to appear.

(c) The administrative law judge may make a determination on the issues of good cause based on a review of the assertions and evidence submitted with the party's request for a good cause hearing or may schedule the matter for a hearing if additional testimony and evidence are deemed necessary for making the good cause finding. If a hearing is scheduled on the issue of good cause for failure to appear, the administrative law judge may limit the hearing solely to the issue of good cause or may combine the hearing with other pre-hearing conference matters or with the hearing on the merits, at the discretion of the administrative law judge.

(d) Unless a default judgment for failure to appear is challenged and reversed, as described in subsections (b) and (c) of this section, the default judgment is considered the final order (Final Order) of DFPS and may not be further appealed except as provided under §705.1531 of this chapter (relating to How is judicial review requested and what is the deadline?).

(e) If a default judgment rendered against an employee becomes the Final Order, DFPS will submit the employee's name for inclusion in the Employee Misconduct Registry in the same manner as it would following any other Final Order that affirms the finding of reportable conduct, as provided in this subchapter.

(f) If a default judgment rendered against DFPS becomes the Final Order, DFPS shall amend its records to reverse the findings at issue in the EMR hearing and shall issue an amended Notice of Finding to the employee reflecting that change.

§705.1527. How is the EMR conducted?

(a) The hearing is similar to a civil court trial, but is less formal. The parties to the hearing are the employee and DFPS.

(b) The hearing is conducted by an administrative law judge who has the duty to provide a fair and impartial hearing and to ensure that the available and relevant testimony and evidence are presented in an orderly manner. The administrative law judge has authority to administer oaths, issue subpoenas, and order discovery.

(c) Prior to the hearing, the employee may request a copy of the investigation record, edited to remove the identity of the reporter and any other confidential information to which the employee is not entitled. The administrative law judge will only issue subpoenas or order additional discovery upon request of a party and a finding of good cause for the issuance or order.

(d) Both parties will be given the opportunity to present their own testimony and evidence, as well as the testimony and evidence of witnesses. Any person who provides testimony at the hearing will be sworn under oath.

(e) Both parties will be given the opportunity to examine the evidence presented by the other party, to cross-examine any witnesses presented by the other party, and to rebut or respond to the evidence presented by the other party.

(f) Testimony of a witness may be presented by written affidavit, but may be given less weight than the credible testimony of a witness who testifies in person, under oath, subject to cross-examination.

(g) Presentation of evidence at the hearing is not restricted under the rules of evidence used in civil cases. The administrative law judge will admit evidence if it is of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. Evidence will not be admitted if it is irrelevant, immaterial, unduly repetitious, or precluded by statutory law.

(h) Both parties have the right to be represented at the hearing by a person of their choosing who may be, but is not required to be, an attorney.

(i) The administrative law judge will assist either party in presenting their evidence and testimony, as needed, to ensure that a complete and proper record is developed at the hearing.

(j) The administrative law judge will arrange to have an interpreter available for the hearing if a party or witness requires an interpreter in order to effectively participate in the hearing.

(k) The hearing will be recorded by audio or video tape in order to preserve a record of the hearing. A transcription of the hearing tape will not be made or provided unless an employee seeks judicial review, as provided in this subchapter. The costs of transcribing the testimony and preparing the record for judicial review shall be paid by the party who files for judicial review, unless the party establishes indigence as provided in Rule 20 of the Texas Rules of Appellate Procedure.

(l) The hearing is closed to the general public consistent with the required statutory confidentiality of DFPS records. Only the employee, the employee's representative, and any testifying witnesses may attend the hearing.

§705.1529. How and when is the decision made after the EMR hearing?

(a) The administrative law judge will prepare a dispositive order that may become final (Final Order), which will be mailed to the employee at the employee's last known mailing address. The Final Order must contain the following:

(1) separate statements of the findings of fact and conclusions of law that uphold, reverse, or modify the findings as to whether:

(A) the employee committed abuse, neglect, or financial exploitation; and

(B) the abuse, neglect, or financial exploitation committed by the employee meets the definition of reportable conduct; and

(2) if reportable conduct is found to have occurred:

(A) a statement of the right of the employee to seek judicial review of the order; and

(B) a statement that the finding of reportable conduct will be forwarded to HHSC to be recorded in the Employee Misconduct Registry unless the employee timely files a petition for judicial review as provided in §705.1531 of this chapter (relating to How is judicial review requested and what is the deadline?).

(b) The commissioner may designate a Final Order to be published in an Index of Hearing Orders that are deemed to have precedential authority for guiding future decisions and DFPS policy. A Final Order must be edited to remove all personal identifying information before publication in the Index of Hearing Orders.

§705.1531. How is judicial review requested and what is the deadline?

(a) A timely motion for rehearing is a prerequisite to judicial review and must be filed in accordance with Texas Government Code, Chapter 2001, Subchapters F and G. The motion for rehearing must be served on the administrative law judge and on DFPS's attorney of record.

(b) To seek judicial review of a Final Order, a party must file a petition for judicial review in a Travis County district court, in accordance with Texas Government Code, Chapter 2001, Subchapters F and G.

(c) Judicial review by the court is under the substantial evidence rule, as provided by Texas Human Resources Code, §48.406.

(d) Unless citation for a petition for judicial review is served on DFPS within 90 days after the date on which the order under review becomes final, DFPS submits the employee's name for inclusion in the Employee Misconduct Registry. If valid service of citation is received after the employee's name has been recorded in the registry, DFPS requests that the employee's name be removed from the registry pending final disposition on judicial review.

§705.1533. What action does DFPS take when an employee's administrative case is fully resolved or has reached final disposition?

(a) An employee's administrative case is fully resolved or has reached final disposition if the employee has been found to have committed reportable conduct and the employee has received or is no longer eligible for:

(1) an EMR hearing;

(2) a rehearing of the employee's case following an EMR hearing; or

(3) judicial review.

(b) DFPS takes the following actions once an employee's administrative case is fully resolved or has reached final disposition:

(1) modifies DFPS's internal records to reflect the final outcome in the case;

(2) provides notice of the final outcome in the case to any person or entity that was previously notified of DFPS's findings, if the finding is modified; and

(3) sends the employee's name and required information to the Employee Misconduct Registry if the finding of reportable conduct was sustained.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003534
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER S. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §§705.1901, 705.1903, 705.1905, 705.1907, 705.1909, 705.1911, 705.1913, 705.1915, 705.1917, 705.1919, 705.1921, 705.1923, 705.1925

STATUTORY AUTHORITY

These rules are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed rules.

§705.1901. What is the purpose of this subchapter?

The purpose of this subchapter is to explain to whom and under what circumstances DFPS may disclose APS case records made confidential under Texas Human Resources Code, §48.101 and §48.102, and Texas Family Code, §261.201.

§705.1903. To which investigations does this subchapter apply?

This subchapter applies to investigations conducted by APS under Texas Human Resources Code, Chapter 48, and Texas Family Code, §261.404.

§705.1905. What definitions apply to this subchapter?

The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Case records--All records described in Texas Human Resources Code, §48.101 or §48.102, which were collected, developed, or used in an abuse, neglect, or financial exploitation investigation, or in providing services as a result of an investigation, and which are under the custody and control of DFPS.

(2) Investigation records--That portion of the records described in Texas Human Resources Code, §48.101 or §48.102, which were collected, developed, or used in an abuse, neglect, or financial exploitation investigation and which are under the custody and control of DFPS.

§705.1907. Who has the right to obtain all or part of confidential case records maintained by DFPS?

(a) Upon request and to the extent required by state or federal law, DFPS makes the case records or portions of case records for a living APS client available after appropriate redactions to the following persons:

(1) the APS client;

(2) the court appointed guardian of an APS client;

(3) an attorney, attorney ad litem, or other court appointed legal representative of an APS client;

(4) an alleged or designated perpetrator of abuse, neglect, or financial exploitation of an APS client. The perpetrator is only entitled to those portions of the investigation records that relate to the alleged or designated perpetrator; and

(5) a person, including a reporter, interviewed as a part of an investigation of abuse, neglect, or financial exploitation. The person is only entitled to that portion of the investigation record that relates to that person's interview.

(b) Upon request and to the extent required by state or federal law, DFPS makes the case records or portions of case records for a deceased APS client available after appropriate redactions to the following persons:

(1) the legally appointed representative of the deceased APS client's estate;

(2) the parents of a deceased APS client with a disability, if parental rights were not terminated and no estate exists requiring the appointment of a legal representative for the deceased APS client, and either:

(A) the case records requested relate to events precipitating the death of the APS client; or

(B) DFPS determines that the case records should be made available in the interest of justice;

(3) a person who was guardian at the time of death of the APS client;

(4) an alleged or designated perpetrator of abuse, neglect, or financial exploitation of an APS client. The perpetrator is only entitled to those portions of the investigation records that relate to the alleged or designated perpetrator; and

(5) a person, including a reporter, interviewed as a part of an investigation of abuse, neglect, or financial exploitation. The person is only entitled to that portion of the investigation record that relates to that person's interview.

§705.1909. Are there others who may have access to APS records?

DFPS must make case records available after any required redactions to the following persons:

(1) local, state, or federal law enforcement officials for the purpose of investigating crimes related to:

(A) allegations of abuse, neglect, or financial exploitation of an APS client;

(B) allegations of false or malicious reporting of alleged abuse, neglect, or financial exploitation of an APS client; or

(C) failure to report alleged abuse, neglect, or financial exploitation of an APS client;

(2) local, state, or federal government officials or agencies when:

(A) specifically required by law; or

(B) DFPS determines case records should be made available in the interest of justice;

(3) a court of criminal or civil jurisdiction with a legal matter pending before it, either:

(A) arising out of an investigation of abuse, neglect, or financial exploitation of an APS client; or

(B) concerning an APS client;

(4) persons or agencies when DFPS determines it is necessary to:

(A) access services for an APS client;

(B) provide services to an APS client;

(C) properly meet the needs of an APS client; or

(D) protect an APS client; or

(5) as otherwise provided by law.

§705.1911. When may case records be released under this subchapter?

(a) Records may not be released until:

(1) the investigation is complete;

(2) a proper request has been received, if required; and

(3) the records have been properly redacted.

(b) Portions of investigation records may be released before completion of an investigation:

(1) to law enforcement for investigation of a crime as provided by Texas Human Resources Code, §48.1522; or

(2) as necessary for DFPS to seek emergency protective services or emergency legal action for the protection of an APS client.

(c) Requests for records will be filled on a priority basis, as provided by §702.223 of this title (relating to How does the department prioritize fulfilling requests for copies of confidential client records that require redaction prior to their release?).

§705.1913. When may DFPS withhold records to which the requester is otherwise entitled?

(a) Notwithstanding any other provision in this subchapter, DFPS must not disclose any record or information which, if released to the requester, would:

(1) interfere with an ongoing criminal investigation or prosecution; or

(2) in the judgment of DFPS, the release of that information would endanger the life or safety of any person. DFPS will keep a record of any information not released and must document why the information would be likely to endanger the life or safety of a person. Information withheld from a requester under this subsection, as well as the reason for withholding information under this subsection, must be released only upon a court order pursuant to the provisions in Texas Human Resources Code, §48.101(c).

(b) Notwithstanding any other provision in this subchapter, if any party has sued DFPS and DFPS determines that the release of the requested records might interfere with its defense of that litigation, DFPS may require that a requester seek access to records under the appropriate rules of civil procedure rather than this subchapter.

§705.1915. What other way may records be accessed?

Persons not otherwise authorized to obtain records under this subchapter or through the rules of civil or criminal procedure must obtain a court order using the procedures outlined in Texas Human Resources Code, §48.101.

§705.1917. Are records redacted before release?

(a) Information is redacted based on the eligibility or entitlement of the requester and whether the requester is entitled to the information by law.

(b) With the exception of release to law enforcement and prosecutors as specified in paragraphs §705.1909(1) and (2) of this chapter (relating to Are there others who may have access to APS records?), DFPS must redact case records to remove the name, address, and any other information in the record which reveals the identity of any person as a "reporter." If a person who was a reporter also provided a witness statement or other evidence during the course of the investigation that person's identity as a witness, as well as the information provided by that person in the role of a witness, will be released, provided that any information that might identify that person as the reporter is redacted.

(c) DFPS must withhold the release of any records obtained from another source, if the release of that record to this requester is specifically prohibited under state or federal law. Information which may be withheld under this section includes, but is not limited to, the following:

(1) all medical records subject to Texas Occupations Code, Chapter 159, unless their release to the requester is authorized by that chapter or other law;

(2) non-physician medical records unless their release to the requester is specifically authorized by law;

(3) criminal history or arrest records obtained from law enforcement unless their release to the requester is specifically authorized under state and federal law; and

(4) adult or juvenile probation records unless their release to the requester is specifically authorized under state and federal law.

§705.1919. What are the procedures for requesting access to confidential information?

(a) A request for access to case records must be submitted on DFPS's Request for Records form. DFPS may waive the use of this form or may request additional information not included on the form, if appropriate under the circumstances surrounding a particular request.

(b) DFPS's Request for Records form provides additional instructions regarding the proper filing of the request and any fees that must be paid to obtain copies of the requested records. The methodology for calculating fees is the same as that used by DFPS when responding to any other request for records for which there is a charge.

(c) Upon receipt of a proper request for copies of records, proof of the requester's identity, and a determination that the requester is entitled to have access to those records, DFPS redacts the case records as required, assesses necessary fees, and upon payment, provides copies of the requested records, subject to the exceptions described in this subchapter.

§705.1921. Who has access to videotapes, audiotapes, and photographs?

(a) Persons authorized under this subchapter or other law to have access to investigation records or case records may view and or listen to any videotapes, audiotapes, or photographs which are a part of the case record. Access to this category of records is permitted in controlled areas, designated by DFPS, at a time mutually convenient to the requester and DFPS. When viewing or listening to these records, the requester may not be accompanied by any person who would not otherwise be entitled to have access to these records, unless DFPS determines the participation of this person is appropriate under the circumstances surrounding the request.

(b) Copies of videotapes, audiotapes, and photographs may be provided to the persons or entities by DFPS if provision of a copy is essential to the investigation, prosecution, or resolution of a case. Copies of videotapes, audiotapes, and photographs will not be provided to any other person unless so ordered by a court pursuant to Texas Human Resources Code, §48.101(c).

§705.1923. Who receives copies of reports of investigations in schools?

(a) DFPS sends a written report of an investigation of alleged abuse, neglect, or financial exploitation of an adult with a disability at school, as appropriate, to the State Board for Educator Certification, the local school board or the school's governing body, and the school principal or director, unless the principal or director is the alleged perpetrator. DFPS edits the report to protect the identity of the reporter.

(b) DFPS sends a copy of the report required by subsection (a) of this section to the alleged perpetrator upon request.

§705.1925. Do records lose their confidential status when released under Texas Human Resources Code, Chapter 48, or this subchapter?

No. The person or entity that obtains confidential case records is responsible by law for proper use of and maintaining the confidentiality of the records. Improper release of records is punishable as a criminal offense under Texas Human Resources Code, §40.005.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003535

Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER A. DEFINITIONS

40 TAC §§705.1001, 705.1003, 705.1005, 705.1007, 705.1009, 705.1011

STATUTORY AUTHORITY

These repeals are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed repeals implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed repeals.

§705.1001. How are the terms in this chapter defined?

§705.1003. How is physical abuse defined?

§705.1005. How is sexual abuse defined?

§705.1007. How is emotional or verbal abuse defined?

§705.1009. How is neglect defined?

§705.1011. How is financial exploitation defined?

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003518
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Earliest possible date of adoption: October 11, 2020
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SUBCHAPTER D. ELIGIBILITY

40 TAC §§705.2101, 705.2103, 705.2105, 705.2107

STATUTORY AUTHORITY

These repeals are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed repeals implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed repeals.

§705.2101. How are investigations prioritized?

§705.2103. Who is eligible for emergency protective services?

§705.2105. Who is eligible for purchased client services?

§705.2107. When are purchased client services available?

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003519
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Earliest possible date of adoption: October 11, 2020
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SUBCHAPTER G. FAMILY VIOLENCE

40 TAC §705.3101, §705.3102

STATUTORY AUTHORITY

These repeals are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed repeals implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed repeals.

§705.3101. What actions does APS perform when alleged victims are also victims of family violence?

§705.3102. Can DFPS apply for protective orders?

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003520
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Earliest possible date of adoption: October 11, 2020
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SUBCHAPTER J. RELEASE HEARINGS

40 TAC §§705.4101, 705.4103, 705.4105, 705.4107, 705.4109, 705.4111

STATUTORY AUTHORITY

These repeals are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed repeals implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed repeals.

§705.4101. How are terms in this subchapter defined?

§705.4103. Does the designated perpetrator have the right to appeal?

§705.4105. How is the designated perpetrator notified of the intent to release?

§705.4107. What is the designated perpetrator's role during an administrative review?

§705.4109. Are administrative reviews open to the general public?

§705.4111. Who is notified of the confidential decision?

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003521
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Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER K. TRAINING AND EDUCATION

40 TAC §705.5101

STATUTORY AUTHORITY

These repeals are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed repeals implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed repeals.

§705.5101. What is DFPS's policy on training Adult Protective Services staff?

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003522
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Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER L. RISK ASSESSMENT

40 TAC §705.6101

STATUTORY AUTHORITY

These repeals are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed repeals implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed repeals.

§705.6101. What assessments does APS use in an in-home case?

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003523
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Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER M. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §§705.7101, 705.7103, 705.7105, 705.7107, 705.7109, 705.7111, 705.7113, 705.7115, 705.7117, 705.7119, 705.7121, 705.7123

STATUTORY AUTHORITY

These repeals are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed repeals implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed repeals.

§705.7101. What is the purpose of this subchapter?

§705.7103. To which investigations does this subchapter apply?

§705.7105. What definitions apply to this subchapter?

§705.7107. Who has the right to obtain all or part of confidential case records maintained by DFPS?

§705.7109. Are there others who may have access to APS records?

§705.7111. When may case records be released under this subchapter?

§705.7113. When may DFPS withhold records to which the requester is otherwise entitled?

§705.7115. What other way may records be accessed?

§705.7117. Are records redacted before release?

§705.7119. What are the procedures for requesting access to confidential information?

§705.7121. Who has access to videotapes, audiotapes, and photographs?

§705.7123. Do records lose their confidential status when released under Chapter 48 of the Human Resources Code or this subchapter?

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003524
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER N. PUBLIC AWARENESS

40 TAC §705.8101

STATUTORY AUTHORITY

These repeals are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed repeals implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed repeals.

§705.8101. How does DFPS educate the public about APS?

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003525
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER O. PILOT PROGRAM

40 TAC §705.9001

STATUTORY AUTHORITY

These repeals are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The proposed repeals implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the proposed repeals.

§705.9001. What is the purpose of the pilot program?

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003526
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 11, 2020
For further information, please call: (512) 438-3397

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 155. PAYOFF STATEMENTS

SUBCHAPTER A. FORM AND DELIVERY

7 TAC §155.2

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), the Office of the Consumer Credit Commissioner (OCCC), and the Texas Department of Banking (DOB; SML, OCCC, and DOB, collectively, the "joint financial regulatory agencies"), adopts amendments to existing Title 7 Texas Administrative Code (TAC), Part 8, Chapter 155, Subchapter A, §155.2, without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4454). The rule will not be republished.

Explanation of and Justification for the Rule

7 TAC, Chapter 155 contains the administrative rules of the joint financial regulatory agencies concerning requirements for the creation and delivery of payoff statements for home loans. The amendments arose in part from the joint financial regulatory agencies' periodic review of Chapter 155, conducted pursuant to Government Code, §2001.039. The commission, determining that the reasons for initially adopting the rules contained in Chapter 155 continued to exist, readopted such rules in the January 3, 2020, issue of the *Texas Register* (45 TexReg 162). While readopting the rules, the commission contemporaneously proposed amendments to 7 TAC §155.2 (45 TexReg 33). The amendments proposed at that time were limited to non-substantive formatting changes to reconcile differences between the form published on SML's website and the form embedded in §155.2. However, during the period for public comment to such proposal, the joint financial regulatory agencies received one comment submitted by the Texas Land Title Association (commenter) requesting that the payoff statement form be revised to include additional information. Specifically, the commenter requested that, in order for the title company to more easily verify the loan servicer has correctly identified the loan for which the payoff statement was requested, the payoff statement form state the loan number assigned for identification purposes, or if the loan number is not available, the original loan amount. The joint financial regulatory agencies determined the comment and proposed revisions had merit and that the revisions should be considered by the commission for potential adoption. The joint financial regulatory agencies further determined that the revisions would be best achieved by amending the rule to impose the requirement within the actual text of the rule, in addition to making corresponding changes to the form embedded in the rule. Given the revisions made substantive changes to the text of the rule and to the form embedded in the rule beyond the non-substantive formatting changes initially proposed, the joint financial regulatory agencies determined it would be prudent to republish the rule as a new rule proposal for public comment. The initial January 3, 2020, proposal was withdrawn at the same time the second proposal affecting the rule was published in the *Texas Register* (45 TexReg 4497). The amendments adopted effectuate the revisions suggested by the commenter, in addition to the non-substantive formatting amendments proposed in the initial January 3, 2020 proposal.

Summary of Public Comments

Publication of the joint financial regulatory agencies' proposal to amend 7 TAC §155.2 recited a deadline of 30 days to receive public comments, or August 2, 2020. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received in response to the proposal.

Statutory Authority

Amended 7 TAC §155.2 is adopted under the authority of, and to implement, Finance Code §343.106(b), which requires the commission to adopt rules governing requests by title insurance companies for payoff information from mortgage servicers related to home loans and the provision of that information, including rules prescribing a standard payoff statement form that must be used by mortgage servicers to provide payoff statements.

The adoption of amended 7 TAC §155.2 affects the statutes contained in Finance Code, Chapter 343.

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

Filed with the Office of the Secretary of State on August 31, 2020.

TRD-202003573
Iain A. Berry
Associate General Counsel
Joint Financial Regulatory Agencies
Effective date: September 20, 2020
Proposal publication date: July 3, 2020
For further information, please call: (512) 475-1535

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. FEES, LICENSE APPLICATIONS, AND RENEWALS

22 TAC §72.18

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.18 (Criminal History) as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3975). The Board will adopt a new §72.18 in a separate rulemaking. As part of the Board's comprehensive rule revision effort, the purpose of the repeal is to make the Board's licensing rules simpler and easier to navigate. The repeal will not be republished.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003495
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.18

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.18 (Criminal History), without changes to the text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3975). The rule will not be republished.

As part of the Board's comprehensive rule revision effort, the new rule removes unnecessary text, makes the Board's rules simpler and easier to navigate, and brings the rule into compliance with changes in Texas Occupations Code Chapter 53 made during the last legislative session (House Bill 1342, 86th Legislature, Regular Session).

In addition to overall simplifying the current rule's language, which mirrors the Board's obligations under Texas Occupations Code Chapter 53 (relating to the consequences of a criminal conviction on an occupational license), the new §72.18 permits an incarcerated individual to apply for a license if the individual is within three months of release from prison. The new rule also explicitly requires the Board to notify an individual whose application has been denied for past criminal history acts of the procedures to appeal the Board's decision. The rule further allows the Board to delegate to the executive director the authority to consider an applicant's minor criminal convictions.

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic and Texas Occupations Code §§53.022 - 52.0231, which impose requirements on the Board in considering past criminal acts by an applicant.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003496
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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CHAPTER 76. PATIENT RECORDS AND DOCUMENTATION

22 TAC §76.1

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §76.1 (Patient Request for Records) as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3977). The rule will not be republished.

The Board will adopt a new §76.1 in a separate rulemaking. As part of the Board's comprehensive rule revision effort, the purpose of the repeal is to make the Board's rules simpler and easier to navigate.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003497
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: July 24, 2020
For further information, please call: (512) 305-6700

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22 TAC §76.1

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §76.1 (Required Contents of Patient Records) as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3977). The rule will not be republished.

Following a July 2019 stakeholder meeting about patient records, the Board agreed there was a lack of uniformity among

licensees as to the information contained in patient records. In the Board's opinion, this lack could contribute to inefficiencies leading to physical or financial harm to patients and other stakeholders, including erroneous diagnosis, incomplete or unnecessary treatments, incorrect or improper billing for services, or incorrect insurance claims. To prevent those harms and to protect both patients and licensees, the Board adopts new §76.1, which the Board believes codifies current best practices in the chiropractic profession relating to patient records. The new rule provides licensees and other stakeholders with specific minimum guidance as to what constitutes a proper patient record.

This rule is part of the Board's overall rewriting of its patient records rules in 22 TAC Chapter 76. The Board is adopting the repeal and replacement of §76.1 and §76.2 and adopting new §76.3 and §76.4. The new rules separate the broad topic of patient records into four functional categories: patient record contents (new §76.1); requests for records (new §76.2); fees (new §76.3); and record maintenance (new §76.4).

The purpose of the repeal is to make the Board's rules relating to patient records more complete as well as simpler and easier for stakeholders to navigate.

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003498
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §76.2

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §76.2 (Required Patient Records), without changes to the text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3978). The repeal will not be republished.

The Board will adopt a new §76.2 in a separate rulemaking. As part of the Board's comprehensive rule revision effort, the purpose of the repeal is to make the Board's rules simpler and easier to navigate.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003499
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §76.2

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §76.2 (Requests for Patient Records) with non-substantive changes as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3979). The rule will be republished.

Following a July 2019 stakeholder meeting about patient records, the Board agreed the Board's current rule for requesting patient records did not adequately explain the procedures for when a licensee believed disclosure could potentially harm a patient. The new §76.2 establishes a process where a licensee shall seek a second opinion from another licensee as to any potential harm to a patient. The new rule further clarifies in subsection (h) that a licensee may charge fees for the records before disclosure (permissible fees are contained in new §76.3). The new rule provides licensees and other stakeholders with clear guidance on how to properly handle requests for patient records.

This adopted rule is part of the Board's overall rewriting of its patient records rules in 22 TAC Chapter 76. The Board is adopting the repeal and replacement of §76.1 and §76.2 and adopting new §76.3 and §76.4. The new rules separate the broad topic of patient records into four functional categories: patient record contents (new §76.1); requests for records (new §76.2); fees (new §76.3); and record maintenance (new §76.4).

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

§76.2. Requests for Patient Records.

(a) A patient may request patient records be disclosed to another person or to the patient.

(b) A patient shall make the request for disclosure of patient records in writing.

(c) In a written request for disclosure of patient records, a patient shall include:

(1) the specific information or records to be disclosed; and

(2) the person to whom the records are to be disclosed.

(d) A patient or other person legally authorized to act on the patient's behalf shall sign the written request for disclosure of patient records.

(e) A patient may withdraw consent to disclosure in writing at any time.

(f) Withdrawal of consent does not affect any information disclosed before the withdrawal.

(g) A licensee or other person may honor an oral request for disclosure if the licensee or other person documents:

(1) the patient's identity by valid government identification or legal documents that identify a person as the patient's legal representative; and

(2) the information required by subsections (c) and (d) of this section.

(h) A licensee or other person shall disclose patient records, after receiving any applicable fees for the records, within 15 business days from the date of the request, unless the request is denied under subsection (j) of this section.

(i) A licensee or other person may not deny a patient's request for records for:

(1) a past due account for care or treatment previously rendered to the patient; or

(2) the lack of a letter of protection; or any other similar document.

(j) A licensee or other person may not disclose information in a patient record if a licensee determines that disclosure would harm the physical, mental, or emotional health of the patient.

(k) If a licensee determines that disclosure would be harmful, a licensee shall:

(1) document in writing the rationale;

(2) notify the patient within 15 days of the date of the patient's request; and

(3) request in writing a second opinion from another licensee within 15 days of the patient's request for records.

(l) A licensee who receives a request for a second opinion under subsection (k) of this section shall provide a written opinion to the requesting licensee within 15 days of the request.

(m) A licensee shall disclose all information in a patient's record only if the licensee receives a written second opinion from another licensee which states disclosure would not be harmful to the patient.

(n) A licensee shall disclose only redacted non-harmful information in a patient's records if the licensee receives a second opinion from another licensee which states there is potential harm to the patient if disclosed.

(o) A subpoena may not be required for the release of patient records under this section.

(p) A licensee or other person who violates this section is subject to disciplinary action.

(q) This section does not supersede Texas Health and Safety Code Chapter 181 or any other applicable state or federal law.

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

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003500
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §76.3

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §76.3 (Fees for Providing Patient Records) as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3980). The rule will not be republished.

Following a July 2019 stakeholder meeting about patient records, the Board agreed the Board's rule on fees for patient records does not adequately cover licensees' present day costs, nor does it address changes in technology since the Board's general patient records rules were last amended in 2015. The new rules establishes reasonable maximum fees a licensee may charge for digital, paper, and imaging film records, as well as the actual cost of delivery. The rule in subsection (j) also makes explicit that a licensee may charge a reasonable fee to answer a deposition by written question. The rule informs licensees, patients, and other stakeholders of what the allowable fees a licensee may charge for specific types of patient records.

This rule is part of the Board's overall rewriting of its patient records rules in 22 TAC Chapter 76. The Board is adopting the repeal and replacement of §76.1 and §76.2 and adopting new §76.3 and §76.4. The new rules separate the broad topic of patient records into four functional categories: patient record contents (new §76.1); requests for records (new §76.2); fees (new §76.3); and record maintenance (new §76.4).

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003501
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §76.4

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §76.4 (Duty to Maintain and Store Patient Records) with changes to the text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3982). The rule will be republished.

Following a July 2019 stakeholder meeting about patient records, the Board agreed the Board's existing rule on the maintenance and storage of patient records gave insufficient guidance to licensees on their duties concerning those records. The new §76.4 updates language in current §76.2 to make clear a licensee must maintain records for a minimum of six years from the date of the specific treatment or service. The rule further clarifies a licensee's duties to a patient's records when a doctor-patient relationship has been established and the licensee subsequently leaves employment or a partnership, or when a partnership dissolves.

The rule gives licensees and other stakeholders clear guidance as to who is responsible for the maintenance and storage of patient records and under what circumstances.

This adopted rule is part of the Board's overall rewriting of its patient records rules in 22 TAC Chapter 76. The Board is adopting the repeal and replacement of §76.1 and §76.2 and adopting new §76.3 and §76.4. The new rules separate the broad topic of patient records into four functional categories: patient record contents (new §76.1); requests for records (new §76.2); fees (new §76.3); and record maintenance (new §76.4).

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

§76.4. Duty to Maintain and Store Patient Records.

(a) A licensee or other person shall maintain the record of a patient's treatment or service for a minimum of six years from the date of that treatment or service.

(b) If a patient was younger than age 18 when the patient last received treatment or service, a licensee or other person shall maintain a patient's records until a patient reaches age 21 or for six years from the date of last treatment or service, whichever is longer.

(c) If another federal or state law or rule, or business agreement requires a patient record to be maintained for a time longer than in subsections (a) and (b) of this section, a licensee or other person shall comply with that law, rule, or business agreement.

(d) A licensee or other person shall maintain a patient record relating to a civil, criminal, or administrative proceeding until the proceeding is finally resolved.

(e) A licensee or other person shall ensure patient records are securely stored to protect a patient's privacy.

(f) If a licensee establishes a doctor-patient relationship solely due to a licensee's employment by or contract for services with another person, a licensee's duty to maintain patient records created during the employment or contract ceases when the licensee's employment or contract ends.

(g) If a licensee establishes a doctor-patient relationship solely due to a licensee's participation in a partnership with another person, a licensee's duty to maintain patient records created during the partnership ceases when the licensee's participation in the partnership ends and the remaining partners continue the partnership.

(h) If a partnership in which a licensee is a partner dissolves, each licensee and person in the partnership is individually and jointly responsible for the maintenance of patient records unless a licensee or other person assumes that duty by written agreement.

(i) A licensee or other person shall reasonably notify a patient when the duty for maintaining patient records will change.

(j) A licensee or other person who violates this section is subject to disciplinary action.

(k) A licensee closing a practice shall comply with all Board rules relating to the storage and maintenance of patient records.

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

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003502
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 13, 2020
Proposal publication date: June 12, 2020
For further information, please call: (512) 305-6700

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER C. TEXAS MEDICAL LIABILITY INSURANCE UNDERWRITING ASSOCIATION

28 TAC §§5.2001 - 5.2006

The Commissioner of Insurance adopts amendments to 28 TAC §§5.2001 - 5.2006, relating to the Texas Medical Liability Insurance Underwriting Association (JUA) Plan of Operation (Plan). Sections 5.2001, 5.2005, and 5.2006 are adopted without changes to the text as proposed in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5116). These rules will not be republished. The Texas Department of Insurance (TDI) made nonsubstantive changes to the proposed text in §§5.2002 - 5.2004. The rules will be republished.

REASONED JUSTIFICATION. The Texas Legislature formed the JUA in 1975 to be the residual market for medical liability insurance. The JUA is governed by a board of directors composed of nine members who are representatives from various industry groups and public members. Insurance Code §2203.052(a)(1) provides that five of the nine members of the board must be representatives of insurers, elected by association members.

Section 5.2002(d)(2)(B) fulfilled that requirement, in part, by providing that the Property Casualty Insurers Association of America (PCI) and the American Insurance Association (AIA) each select a member. PCI and AIA merged into the American Property Casualty Insurance Association (APCIA), effective January 1, 2019. To address the change, at their meeting on February 27, 2020, the JUA board voted to replace PCI and AIA with APCIA and the National Association of Mutual Insurance Companies (NAMIC). The amendments to §5.2002(d)(2)(B) will allow

APCIA to appoint one member and NAMIC to appoint another so that the number of board members remains at nine.

Also, the amendments update several statutory references, make changes for agency style, and add the option for a foreign insurer to be a board member. A "foreign insurer" is an insurer that is licensed to do business in Texas but is domiciled in another state.

Section 5.2001. This section is amended to update statutory citations and make other nonsubstantive edits for current agency style, including removing "shall" in places where it is unnecessary.

Section 5.2002. Section 5.2002(d)(2)(B) is amended to allow APCIA to appoint one board member and NAMIC to appoint another so that the number of members remains at nine.

Section 5.2002(d)(2)(C)(ii) is amended to add an option for one board member slot to be filled either by an insurer who is not a member of the listed trade associations (which was provided for in the previous rule) or by a foreign insurer. This addition will add flexibility in choosing board members.

Section 5.2002 is also amended to update statutory citations and make other nonsubstantive edits to update the language to current agency style. This includes removing "shall" and replacing it with "will" or "must" where that word is clearer, capitalizing "Commissioner," and editing for plain language.

The text of §5.2002 is adopted with nonsubstantive changes to the proposed text to add clarity and consistency in the rule text and conform with the department's current writing style. In §5.2002(c)(3) the word "less" is changed to "fewer." In §5.2002(d)(8) the proposal changed "at the meeting which shall be adjourned" to "at the meeting which will be adjourned." In the adopted rule, the word "which" is changed to "that." In §5.2002(d)(11) the word "multi-year" is changed to "multiyear." A proposed amendment to §5.2002(h)(5) would have changed "In each instance in which a question of indemnification arises" to "In each instance in when a question of indemnification arises." In the adopted rule, the word "when" is changed to "that." And, in §5.2002(i) the word "of" is changed to "to."

Section 5.2003. This section is amended to update statutory citations and make other nonsubstantive edits to update the language to current agency style, including replacing "shall" with "will" or "must" where that word is clearer, capitalizing "Commissioner," and editing for plain language.

The text of §5.2003 is adopted with nonsubstantive changes to the proposed text to add clarity and consistency in the rule text and conform with the department's current writing style. In §5.2003(b)(2)(A)(i) an unnecessary "or" is deleted and in §5.2003(e) the word "which" is changed to "that."

Section 5.2004. Section 5.2004 is amended to update the language to current agency style, including capitalizing "Commissioner" and revising punctuation. Section 5.2004(a)(2)(B) is amended to provide a more specific statutory citation.

The text of §5.2004 is adopted with nonsubstantive changes to the proposed text to add clarity and consistency in the rule text and conform with the department's current writing style. In §5.2004(a)(5)(E)(vii)(I) and (II), two unnecessary uses of "and" are deleted. In §5.2004(b)(4)(A)(v) the word "that" is changed to "who." In §5.2004(b)(4)(A)(vi) the word "then" is added after "licensing agency." In §5.2004(b)(4)(A)(viii) the word "and" is added after "applicant." And, in §5.2004(c)(1)(D) and (E) two unnecessary instances of "or" are deleted.

Section 5.2005. This section is amended to replace the word "shall" with "may" and capitalize "Commissioner" to conform with current agency style.

Section 5.2006. This section is amended to update statutory citations, remove "shall" and replace it with a clearer word, and capitalize "Commissioner" to conform with current agency style.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §§5.2001 - 5.2006 under Insurance Code §§2203.053, 2203.054, and 36.001.

Insurance Code §2203.053(a) provides that the JUA operates under a plan of operation adopted by the Commissioner.

Insurance Code §2203.054 provides that amendments to the Plan must be approved by the Commissioner or made at the direction of the Commissioner.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§5.2002. Operation of the Texas Medical Liability Insurance Underwriting Association.

(a) Membership. The association is governed by Insurance Code Chapter 2203. Any insurer authorized to write and engaged in writing any insurance, the writing of which requires the insurer to become a member of the association under Insurance Code §2203.055, will become a member of the association on the first day of January immediately following the date the insurer started writing such insurance. The determination of the insurer's participation in the association will be made as of the date of such membership in the same manner as for all members of the association. Any member that ceases to be authorized to write or that ceases to engage in the writing of any insurance that would require such insurer to become a member of the association will remain a member of the association until midnight of December 31 next following the date the insurer ceases to be authorized to write or ceases to write such insurance, and the insurer's participation in the association will cease as of that time; provided, however, that each member must participate in any financial deficit of the association for all calendar years subsequent to December 31, 1976, during which the insurer was a member of the association, whenever such deficit is determined. The member must be charged or credited in due course with its proper share of all expenses or losses and any recoupment or reimbursement allocable to the member. If a member is merged or consolidated with another insurer, the continuing insurer will become a member of the association in place of the merged or consolidated member, provided that such member will be deemed to have become a member of the association on the date the merged or consolidated member became a member and provided, further, that such member will pay no initial expense fee.

(b) Expense fees.

(1) Initial expense fee. Each member must pay to the association an initial expense fee of $100. All members of the association must pay such fees on or before the date they become members of the association.

(2) Annual expense fee. In addition to the initial expense fee, each member must pay to the association an annual expense fee in an amount to be determined by the board of directors and approved by the Commissioner. All members of the association must pay such

annual expense fee on or before the first of January for each year during which the association exists.

(3) Remedy for failure to pay fees. If any member fails or refuses to pay either the initial expense fee or the annual expense fee after receipt of written notice by the association that such fee is due and payable, then such member will be subject to the same remedies as provided in §5.2003(d)(4) of this title (relating to Property and Casualty Insurance) for the failure of the member to pay any assessment levied by the association.

(4) Use of fees. All expense fees paid to the association will be used in such manner as the board of directors may from time to time direct in accordance with this subchapter.

(c) Meetings of members.

(1) Notice of meetings. Written or printed notice stating the place, date, hour, subjects of the meeting, and the purpose or purposes for which the meeting is called, must be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chair of the board of directors, the secretary, or other person calling the meeting, to each member entitled to vote at such meeting. Public notice of meetings must be given as required by Government Code Chapter 551.

(2) Meetings.

(A) Annual meeting. The annual meeting of the members must be held not later than the 30th day of September of each year at an hour and place to be determined by the board of directors for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the election of directors is not held on the day designated for any annual meeting of the members, the board of directors must cause the election to be held at a special meeting of the members as soon as may be convenient after the annual meeting.

(B) Special meetings. The board of directors, the chair of the board of directors, or 20% of the members may call a special meeting of the members and designate any place as the place of the special meeting.

(3) Quorum. Fifty members, represented by person or by proxy, is a quorum at a meeting of the members. If fewer than 50 members are represented at a meeting, a majority of the members represented may adjourn the meeting from time to time without further notice. At the next meeting after adjournment at which a quorum is present or represented, any business may be transacted at the meeting as originally notified. The members represented at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough persons to leave less than a quorum.

(4) Voting.

(A) Each member is entitled to one vote at the annual meeting and each special meeting.

(B) A member may vote by proxy executed in writing by the member. No proxy will be valid after the next annual meeting after the date of its execution unless otherwise provided in the proxy. Each proxy is revocable.

(C) Each member's vote may be voted by such officer, agent, or proxy as the bylaws of such member may authorize or, in the absence of such authorization, as such member may determine.

(D) Voting on any question or in any election may be by voice vote or by show of hands unless the presiding officer orders, or any member demands, that voting be by written ballot.

(5) Rules. To the extent applicable, Robert's Rules of Order govern the conduct of and procedure at all meetings of the members.

(d) Directors.

(1) Selection. At each annual meeting of members or as otherwise provided in subsection (c)(2) of this section, the members must elect five directors from member companies for the categories set forth in paragraph (2)(B) and (C) of this subsection. Four directors must be selected in the manner set forth in paragraph (2)(D) - (F) of this subsection. Directors take office on October 1 of each year and will hold office until the next election of directors or until a successor has been selected and qualified.

(2) Membership.

(A) The number of the directors of the association must be nine.

(B) Three directors to be elected in accordance with paragraph (1) of this subsection must be elected by the members and be separate members of the association representing each of the following:

(i) the American Property Casualty Insurers Association;

(ii) the National Association of Mutual Insurance Companies; and

(iii) the Insurance Council of Texas.

(C) Two directors must be elected by the members and must be:

(i) a member insurer organized under the laws of and domiciled in Texas; and

(ii) a member insurer that is either (or both):

(I) not a member of those associations described in subparagraph (B) of this paragraph, or

(II) an insurer that is not domiciled in Texas.

(D) One director must be a physician who is appointed by the Texas Medical Association or its successor.

(E) One director must be a representative of hospitals appointed by the Texas Hospital Association or its successor.

(F) Two directors must be members of the public to be appointed by the Commissioner.

(G) No director may fill more than one seat on the board of directors, and no member affiliated by ownership, management, or control may simultaneously occupy seats on the board of directors. No later than 60 days before the annual meeting, the board of directors must select a nominating committee of three member companies. The three directors who will represent the organizations set forth in subparagraph (B) of this paragraph must be nominated by the nominating committee. The two directors described in subparagraph (C) of this paragraph must be nominated by any member of the association by submitting the nominee's name to the nominating committee. To be eligible for selection to the board of directors by the members, a member must be nominated at least 30 days before the annual meeting at which such directors are selected.

(3) Term of office. Unless removed in accordance with this subchapter, each director will hold office until the next election of directors or until a successor has been selected and qualified.

(4) Regular meetings. A regular meeting of the board of directors must be held with notice as provided for in this subsection,

immediately after and at the same place as the annual meeting of the members. The board of directors may provide, by resolution, the time and place for the holding of additional regular meetings with notice to the directors at least 10 days before each regular meeting as provided in this subsection.

(5) Notice of regular or special meeting. Notice of any regular or special meeting must be given at least 10 days before the meeting. The association must provide notice by personal delivery, mail, electronic, or other means to each director. If mailed, notice will be deemed to be delivered when deposited in the United States mail, addressed with postage prepaid. If the notice is by other reasonable means, the association must maintain a written record of the method of notification. Any director may waive notice of any meeting. The attendance of a director at a meeting is a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objection to the transaction of any business because the meeting is not lawfully called or convened.

(6) Special meetings. Special meetings of the board of directors may be called by the chair of the board, or at the request of any two directors. The person or persons who call special meetings of the board of directors may fix any place that is accessible to the public as the place for holding any special meeting of the board of directors called by them.

(7) Statement of purpose of meeting required. The business to be transacted at, and the purpose of, any regular or special meeting of the board of directors must be specified in the notice, or waiver of notice, of the meeting, and in the notice required by Government Code Chapter 551.

(8) Quorum. A majority of directors is a quorum for the transaction of business at any meeting of the board of directors. Action taken by a majority of directors present at a meeting at which a quorum is present will be the act of the board of directors. If at any meeting of the board of directors there is less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice need be given other than by announcement at the meeting that will be adjourned.

(9) Presumption of assent. A director of the association who is present at the meeting of the board of directors at which action on any matter is taken is presumed to have assented to the action taken unless the director's dissent is entered in the minutes of the meeting, or unless a written dissent to the action is filed with the person acting as secretary of the meeting before the adjournment. The right to dissent is not available to a director who voted in favor of the action.

(10) Compensation. By resolution of the board of directors, the directors and members of committees of the association may be paid their expenses, if any, of attendance at each meeting of the board of directors or each meeting of a committee of the association. No other payment may be made to directors other than that provided in this paragraph except that nothing in this subchapter may be construed as preventing any director from receiving compensation for serving the association in any other capacity.

(11) General powers. The board of directors must manage the business and affairs of the association subject to the supervision and control, at all times, of the Commissioner and the department as set forth in this subchapter and in the Act. Included among the powers of the board of directors, but not in limitation thereof, are the following:

(A) to purchase or otherwise acquire for the association any property, rights, or privileges that the association is authorized to acquire;

(B) to remove any officer summarily for cause, or without cause and, in their discretion, from time to time to dissolve the powers and duties of any officers and to confer the powers and duties upon any other person;

(C) to appoint and remove or suspend such subordinate officers, agents, employees, or representatives as they may deem necessary and to determine their duties, and fix, and from time to time change, their salaries or remuneration, and to require security as and when they think fit;

(D) to confer upon any officer of the association the power to appoint, remove, and suspend subordinate officers or employees;

(E) to determine who may be authorized on the association's behalf to make and sign bills, notes, acceptances, endorsements, checks, releases, receipts, contracts, and other instruments;

(F) to delegate any of the powers of the board of directors in relation to the ordinary business of the association to any standing or special committee, or to any officers or agent (with power to subdelegate) upon such terms as they think fit;

(G) to contract, from time to time, with one or more members for single or multiyear terms, to act as servicing carriers to perform all policy functions of the association, including, without limitation to, underwriting, issuance of policy, coding and premium accounting, settlement of claims to conclusion, and reporting to the association, as may be directed by the association, subject to provisions of law and this subchapter, upon the terms and for the consideration expressed. Such contracts may not become effective until the contracts have been approved by the department;

(H) to approve expenses and levy assessments, including preliminary assessments for initial expenses necessary to commence operations, and assessments to defray losses and expenses;

(I) to establish necessary facilities;

(J) to enter into commission arrangements with agents regarding the sale of medical liability insurance through the association;

(K) to promulgate reasonable and objective underwriting standards;

(L) to either or both accept and refuse the assumption of reinsurance from its members and cede and purchase reinsurance, provided, however, that the reinsurance is governed by rules promulgated by the Commissioner; and

(M) to direct the collection, administration, investment, and valuation of the stabilization reserve funds consistent with the Act and this subchapter.

(12) Committees.

(A) The board of directors, by resolution or resolutions passed by a majority of the board of directors, may designate one or more committees, each committee to consist of two or more of the directors of the association that, to the extent provided in the resolution or resolutions, will have and may exercise the powers of the board of directors in the management of the business and affairs of the association. The committee or committees will have the name or names as may be determined from time to time by appropriate resolution. All committees must keep regular minutes of their proceedings and report the minutes to the board of directors when required.

(B) The chair may appoint the members of the committees as may be appropriate to carry out the business of the association.

(C) The delegation to a committee of authority consistent with this section may not operate to relieve the board of directors, or any director, of any responsibility imposed upon the board of directors or director by law.

(13) Removal. Any person serving as a director may be removed from a position as director either with or without cause at any special meeting of members if notice of intention to remove the director has been stated as one of the purposes of the meeting. This paragraph may not be construed to allow the removal of any member from the board of directors.

(14) Vacancies.

(A) A director position is considered vacant upon the resignation of the member serving as director.

(B) Any vacancy occurring in the board of directors may be filled at the next meeting of the board of directors following the occurrence of such vacancy. Subject to the provisions of paragraph (2) of this subsection, such vacancy must be filled by the affirmative vote of a majority of the remaining directors though less than a quorum. A director elected to fill a vacancy must be elected for the unexpired term of its predecessor.

(15) Executive committee. The board of directors, by resolution or resolutions passed by a majority of the board of directors, may designate an executive committee to consist of a chair, a vice chair, a secretary, a treasurer, and the immediate past chair, provided the immediate past chair is a director. The general manager must be an ex officio member of the executive committee. To the extent provided in the resolution or resolutions, the executive committee has and may exercise the powers of the board of directors in the management of the business and affairs of the association. The executive committee must keep regular minutes of its proceedings and report the minutes to the board of directors. The delegation authority consistent with this section does not operate to relieve the board of directors, or any director, of any responsibility imposed by law upon the board of directors or any director.

(e) Officers.

(1) Number. The officers of the association are the chair of the board of directors, the vice chair of the board of directors, the secretary, the treasurer, and other officers as the Commissioner may desire, all of whom are elected by the board of directors. No two offices may be held by the same person except for the offices of secretary and treasurer.

(2) Election and term of office. The officers of the association are elected annually by the board of directors at the first meeting of the board of directors held after each annual meeting of the members or as soon as practical following the annual meeting. Each officer must hold office until a successor has been duly elected and qualified or until the officer's resignation, death, or removal.

(3) Removal and vacancies. Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever, in its judgment, the best interests of the association would be served or otherwise in accordance with this subchapter, but such removal is without prejudice to the contract rights, if any, of the person so removed. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

(4) Chair of the board. The chair of the board must preside at all meetings of the members and at all meetings of the directors, appoint and discharge employees and agents of the association subject to the approval of the directors, fix the compensation of employees and agents, make and sign contracts and agreements in the name of the association, and appoint committees. The chair of the board must ensure that the books, reports, statements, and certificates are properly kept, made, and filed, if necessary, and the chair of the board must generally do and perform all acts incident to the office of chair of the board or that may be authorized or required by law, by this subchapter, or by the board of directors, not inconsistent with this subchapter.

(5) Vice chair of the board. The vice chair, elected by the board of directors, has powers and must perform duties as assigned to the vice chair, not inconsistent with this subchapter.

(6) Secretary. The secretary must:

(A) keep the minutes of the members and of the board of directors' meetings in one or more books provided for that purpose;

(B) provide all notices as required by the provisions of this subchapter. In case of the secretary's absence or refusal or neglect to give the required notice, notice may be given at the direction of the chair of the board of directors, or of the members upon whose request the meeting is called;

(C) be custodian of the association's records;

(D) keep a register of the post office address of each member;

(E) annually determine each member's participation in the association in the manner required by the Act and this subchapter and keep a register of each member's percentage of participation; and

(F) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be delegated to the secretary by the chair of the board or by the board of directors.

(7) Treasurer. The treasurer must have custody of all funds, securities, evidences of indebtedness, and other valuable documents of the association, including those attributable to the stabilization reserve funds. The treasurer must receive and give, or cause to be given, receipts and acquittances for money paid in on account of the association, and pay out of the funds on hand all just debts of the association, of whatever nature, upon maturity of the debts. The treasurer must enter, or cause to be entered, in books of the association to be kept for that purpose, full and accurate accounts of all money received and paid out on account of the association, and whenever required by the board of directors, the treasurer must keep, or cause to be kept, other books as would show a true record of the reserves, expenses, losses, gains, assets, and liabilities of the association.

(f) Fiscal year. The fiscal year of the association is the calendar year.

(g) Waiver of notice. Whenever any notice is required to be given to any members or director of the association under the provisions of this subchapter, a waiver in writing signed by the person or persons entitled to notice is deemed equivalent to the giving of such notice.

(h) Protection of directors and officers.

(1) Any person or insurer made or threatened to be made a party to any civil, criminal, administrative, or investigative action, suit, or proceeding (other than an action by or in the right of the association) because such person or insurer is or was a member or is serving or served on a committee or is or was an officer or employee of the association or is or was serving any other entity or organization at the request of the association is entitled to be indemnified by the association against all judgments, fines, amounts paid in settlement, reasonable costs and expenses (including attorneys' fees), and other liabilities actually and reasonably incurred (other than for amounts paid to the as-

sociation itself) as a result of such threatened or actual action, suit, or proceeding except in relation to matters as to which that person or insurer is finally adjudged in such action, suit, or proceeding to be liable by reason of willful misconduct in the performance of that person's or insurer's duties or obligations to the association or other entity as previously provided and, with respect to any criminal actions or proceedings, except when such person or insurer believed or had reasonable cause to believe that their conduct was unlawful.

(2) Indemnification must be provided whether or not such person or insurer is a member or is holding office or is employed or serving at the time of such action, suit, or proceeding, and whether or not any such liability was incurred prior to the adoption of this subchapter.

(3) Indemnification is not exclusive of other rights such person or insurer may have, and passes to the successors, heirs, executors, or administrators of such person or insurer.

(4) The termination of any such action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent will not in itself create a presumption that such person or insurer was liable by reason of willful misconduct or that they had reasonable cause to believe that their conduct was unlawful.

(5) In each instance that a question of indemnification arises, entitlements thereto, pursuant to the condition set forth in this subsection, must be determined by the board of directors by a majority vote of a quorum consisting of directors that were not parties to such action, suit, or proceeding or by the board of directors, whether interested or disinterested, if based upon a written opinion of legal counsel that the action, suit, or proceeding could qualify for indemnification because of reasonable doubt that the directors were liable by reason of willful misconduct in the performance of duties or obligations to the association or other entity as provided in this subsection, or that there was reasonable doubt that the directors believed or had reasonable cause to believe that the conduct was unlawful, and the board of directors must also determine the time and manner of payment of such indemnification; provided, however, if any such action, suit, or proceeding is terminated by compromise settlement, indemnification in respect of such disposition must be made only if such settlement had the prior approval of the board of directors, and provided further that a person or insurer who or that has been wholly successful, on the merit or otherwise, in the defense of a civil or criminal action, suit, or proceeding of the character described in this subsection will be entitled in every instance to indemnification as authorized in this subchapter.

(6) Expense incurred in defending a civil or criminal action, suit, or proceeding may be paid by the association in advance of the final disposition of the action, suit, or proceeding, as authorized by the board of directors in the specific case, upon receipt of an undertaking by or on behalf of the person or insurer to repay the amount, unless it is determined that the person or insurer is not entitled to be indemnified by the association.

(7) Nothing in this subsection is deemed to preclude a person or insurer who or that the board of directors has determined not to be entitled to indemnification from asserting the right to such indemnification by legal proceedings.

(8) Indemnification as provided in this subsection is apportioned among all members, including any named in any such action, suit, or proceeding, in the same manner as other operating expenses of the association.

(i) Annual report. The treasurer must file with the department annually, on or before the first day of March, a statement that contains information on the association's transactions, condition, operations, and affairs during the preceding calendar year. Such statement must be in the form and contain the matters and information prescribed by the department. The department may, at any time, require the association to furnish additional information with respect to its transactions, condition, or any matter considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

(j) Examinations. The department must examine the affairs of the association in accordance with Insurance Code Chapter 401.

§5.2003. Members' and Policyholders' Participation in the Texas Medical Liability Insurance Underwriting Association.

(a) Powers of the association. The association is created by the Act and will be governed by the provisions of the Act and this subchapter.

(b) Collection and investment of funds.

(1) Collection. The treasurer is responsible for the collection of all the premiums received by the association, all assessments levied against the members, all assessments and charges levied against policyholders (including contributions to the stabilization reserve funds), and all proceeds from the investment of funds.

(2) Investment.

(A) All funds collected by the association must be retained in appropriate accounts in any bank or banks doing business in Texas and may be invested only in the following:

(i) interest-bearing time deposits or certificates of deposit in any bank or banks doing business in Texas that are members of the Federal Deposit Insurance Corporation;

(ii) treasury bills, notes, or bonds of the government of the United States of America; or

(iii) other investments as may be proposed by the board of directors and approved by the Commissioner.

(B) The board of directors must determine what portion of such funds should be retained in a checking account or accounts and what portion of such funds should be invested in the investments set forth in subparagraph (A) of this paragraph, as well as which specific investments, if any, should be made.

(c) Stabilization reserve funds. Insurance Code §2203.301 creates a policyholder's stabilization reserve fund for physicians and certain health care providers (§2203.301 fund), and Insurance Code §2203.303 creates a stabilization reserve fund for for-profit and not-for-profit nursing homes and assisted living facilities (§2203.303 fund) and further provides that these funds must be administered as provided in Insurance Code Chapter 2203 and this subchapter and that the advisory directors must be chosen as provided in this subchapter.

(1) General provisions.

(A) In accordance with Insurance Code §2203.101 and §2203.103, the Commissioner will establish by order the categories of physicians and other health care providers, including health care practitioners, and health care facilities, who are eligible to obtain coverage from the association. The order may indicate the stabilization reserve fund appropriate to the new category and may be revised from time to time to include or exclude from eligibility some categories of health care providers and physicians.

(B) The following provisions also govern the stabilization reserve funds under Insurance Code §2203.301 and §2203.303:

(i) Within 15 days after the effective date of any Commissioner order establishing eligibility, the board of directors must extend invitations to the appropriate Texas organizations repre-

senting eligible §2203.301 fund health care providers and physicians and §2203.303 fund for-profit and not-for-profit nursing homes and assisted living facilities to each designate an advisory director to represent each eligible category of §2203.301 fund health care provider and physician and §2203.303 fund for-profit and not-for-profit nursing home and assisted living facility, and advise the association of its choice of director.

(ii) Each designated advisory director has a vote on any matter coming before any meeting of the entire body of advisory directors for the §2203.301 fund or §2203.303 fund to which the advisory director has been designated. That vote will be weighted in the proportion that the net written premium collected during the most recent calendar year from policies issued to each category of §2203.301 fund health care provider and physician or §2203.303 fund for-profit or not-for-profit nursing home and assisted living facility bears to the total net written premiums collected from all categories of §2203.301 fund health care providers and physicians or to all categories of §2203.303 fund for-profit and not-for-profit nursing homes and assisted living facilities as applicable during the same calendar year. The proportion of weighting of the advisory directors' votes for the §2203.301 fund and the §2203.303 fund respectively must be determined annually by the association, not later than August 31.

(iii) The designated advisory directors for the §2203.301 fund and the §2203.303 fund respectively must meet not later than September 15 of each year, at a place in Texas stipulated by the board of directors to consider the amount of funds available and the status of the respective §2203.301 fund or §2203.303 fund. The designated advisory directors for the respective §2203.301 fund and §2203.303 fund must inform the board of directors of the percentage to be charged to all policyholders of all policies issued or renewed by the association for the respective §2203.301 fund or §2203.303 fund during the next calendar year. This percentage must be communicated to the board of directors no later than September 20, annually.

(iv) If any organization described in clause (i) of this subparagraph fails to designate an advisory director, the directors designated by the remaining organizations constitute the entire body of advisory directors for the respective §2203.301 fund or §2203.303 fund, and their establishment of the respective §2203.301 fund or §2203.303 fund charge must be accepted as valid by the association and imposed pursuant to the operational procedures of the association, upon approval of the department.

(v) In the event that the advisory directors fail to establish a specific percentage charge for the respective §2203.301 fund or §2203.303 fund to be collected for the coming calendar year before the applicable deadline, the board of directors must immediately submit for approval by the Commissioner a charge to be collected from the respective §2203.301 fund or §2203.303 fund policyholders of each new and renewal policy during the upcoming calendar year in accordance with the provisions of the Insurance Code.

(vi) The advisory directors serve without salary or other fee, and they may not be reimbursed for any expenses. The advisory directors, in the performance of their duties, will be afforded the protection of §5.2002(h) of this title (relating to Operation of the Texas Medical Liability Insurance Underwriting Association).

(C) The respective §2203.301 fund or §2203.303 fund charge must be collected annually from each policyholder of the applicable §2203.301 or §2203.303 fund, as may be appropriate, and must be stated as a percentage of the annual premium due for all coverages on all policies issued or renewed on or after the effective date of the charge. The percentage charge will remain in effect until changed in accordance with subparagraph (B) of this paragraph.

(D) The respective §2203.301 fund or §2203.303 fund charge must be separately stated in the policy, but may not constitute a part of premium or be subject to premium taxation, servicing fees, acquisition costs, commissions, or any other such charges. Further, the respective fund charge will not be considered premiums for the purpose of any assessments levied under subsection (d) of this section.

(E) The respective §2203.301 fund or §2203.303 fund charges must be collected and administered by the association and must be treated as a liability of the association along with and in the same manner as premium and loss reserves. The §2203.301 fund and the §2203.303 fund must be valued annually by the board of directors within 90 days of the last day of the preceding calendar year.

(F) Collections of the respective §2203.301 fund or §2203.303 fund charge must continue throughout each calendar year for which they are established, provided that no charge will be made during the next succeeding calendar year if the net balance in the respective fund after recoupment of any prior year's deficit equals or exceeds the association's estimate of the projected sum of premiums to be written in the calendar year following the valuation date of the respective fund.

(2) §2203.301 fund or §2203.303 fund charge. The respective proportionate §2203.301 fund or §2203.303 fund charge must be based on the total annual written premium for all coverages provided by the association to the applicable §2203.301 fund or §2203.303 fund policyholders. The respective §2203.301 fund or §2203.303 fund charges are not be refundable if the policy is cancelled after the 90th day of coverage. If cancelled within the 90th day of coverage, the earned charge will be based on the same earned percentage charged for the insurance premium.

(3) Disbursements from the respective §2203.301 fund or §2203.303 fund. Disbursements from the respective §2203.301 fund or §2203.303 fund may not be made for any purpose other than to recoup a deficit from operations as defined in subsection (d) of this section. Upon suspension of the association by the Commissioner, any funds remaining in the §2203.301 fund must be added to the special fund created by the Commissioner, acting as receiver, or a special deputy receiver acting on behalf of the receiver. Any investment income earned on the funds of the §2203.301 fund must be added to that fund. Upon termination of the §2203.303 fund, all assets of the fund must be transferred as provided in the Act.

(d) Participation by members and policyholders of the association.

(1) Deficit and remedy of a deficit.

(A) The association must have sustained a deficit from operations whenever the aggregate of the incurred losses (reported and unreported), plus all loss adjustment expenses incurred, plus commissions and plus other administrative expenses (including servicing carrier fees) incurred by the association in a given calendar year, exceed the aggregate of the net premiums earned and other net income (including investment income earned) realized by the association in the same calendar year.

(B) Any deficits sustained by the association in any one calendar year with respect to any category of physicians or health care providers subject to Insurance Code §2203.101 or for-profit or not-for-profit nursing homes or assisted living facilities subject to Insurance Code §2203.102 must be recouped, pursuant to this subchapter and the rating plan in effect, by one or more of the following procedures in this sequence:

(i) first, a contribution from the §2203.301 fund or §2203.303 fund, as appropriate, until the respective fund is exhausted;

(ii) second, an assessment upon the policyholders pursuant to paragraph (3) of this subsection and Insurance Code §2203.252;

(iii) third, an assessment upon the members of the association pursuant to paragraph (4) of this subsection and Insurance Code §2203.053.

(2) Surplus and disposition of a surplus.

(A) The association must have sustained a surplus from operations whenever the aggregate of the incurred losses (reported and unreported), plus all loss adjustment expenses incurred, plus commissions and plus other administrative expenses (including servicing carrier fees) incurred by the association in a given calendar year, do not exceed the aggregate of the net premiums earned and other net income (including investment income earned) realized by the association in the same calendar year.

(B) Upon approval by the board of directors, surplus from operations must be ratably distributed as reimbursements to members who have been assessed pursuant to paragraph (4) of this subsection and have paid such assessments, but have not been previously reimbursed and have not been allowed the premium tax credit (offset) pursuant to subsection (e) of this section.

(C) Upon approval of the Commissioner, the association must reimburse the state to the extent that the members have recouped their assessments using premium tax credits pursuant to subsection (e) of this section, with interest at a rate to be approved by the Commissioner.

(D) Any balance remaining in the funds of the association at the close of its fiscal year, meaning its then excess of revenue over expenditures after approved reimbursement of members' contributions, must be added to the reserves of the association.

(3) Participation by policyholders of the association.

(A) Assessment of policyholders; contingent liability. Each policyholder within either the §2203.301 fund or §2203.303 fund must have contingent liability for a proportionate share of any assessment of policyholders in the applicable §2203.301 fund or §2203.303 fund made by the association pursuant to Insurance Code §2203.252 and the provisions of the plan of operation set forth in this subchapter.

(B) Procedure for assessment of policyholders. Assessment of policyholders shall be made in accordance with the following:

(i) Notice of assessment must be sent by certified mail, return receipt requested, to each policyholder being assessed within 30 days of the board of directors meeting at which such assessment was levied. Notice must be forwarded to the address of each policyholder as it appears on the books of the association. The notice must state the policyholder's allocated amount of assessment and must inform each policyholder of the sanctions imposed by clause (ii) of this subparagraph for the failure to pay such assessment within the time prescribed by this section.

(ii) Each policyholder must remit to the association payment in full of an assessment within 30 days of receipt of notice of assessment. However, a policyholder that is not delinquent on any prior assessments, stabilization reserve fund charge, or premium may remit payment of an assessment levied for a deficit incurred in a calendar year in two installments with at least one-half of the assessment paid within 30 days after receipt of notice of assessment and the remaining balance paid within 30 days thereafter. If the association has not received payment of the policyholder's assessment or any installment payment within 10 days after the payment is due, then the association must promptly cancel any policy of insurance that the policyholder at that time has in force with the association, and the association may offset any unearned premium otherwise refundable on such policy against the amount of that policyholder's unpaid assessment. Such cancellation of current insurance coverage will in no way affect the right of the association to proceed against the policyholder in any court of law or equity in the United States for any remedy provided by law or contract to the association, including, but not limited to, the right to collect the policyholder's assessment.

(4) Participation by members of the association.

(A) Assessment of members. Insurance Code Chapter 2203 provides that in the event that sufficient funds are not available for the sound financial operation of the association, in addition to assessments paid pursuant to the plan of operation set forth in this subchapter and contributions from the stabilization reserve funds, all members must, on a basis authorized by the Commissioner, as long as the Commissioner deems it necessary contribute to the financial requirements of the association in the manner provided for in this section and Insurance Code §2203.254. Any assessment or contribution must be reimbursed to the members as provided in Insurance Code §2203.255.

(B) Procedure for assessment of members.

(i) All insurers that are members of the association must participate in its writings, expenses, and losses in the proportion that the net direct premiums of each member, excluding that portion of premiums attributable to the operation of the association, written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association during the same calendar year. Each insurer's participation in the association must be determined annually on the basis of net direct premiums written during the preceding calendar year as reported in the annual statements and other reports filed by that insurer that may be required by the department. No member may be obligated in any one year to reimburse the association on account of its proportionate share in the unrecouped deficit from operations of the association in that year in excess of 1.0% of its surplus to policyholders. The aggregate amount not reimbursed must be reallocated among the remaining members in accordance with the method of determining participation prescribed in this subsection, after excluding from the computation the total net direct premiums of all members not sharing in such excess deficit. In the event that the deficit from operations allocated to all members of the association in any calendar year exceeds 1.0% of their respective surplus to policyholders, the amount of the deficit must be allocated to each member in accordance with the method of determining participation prescribed in this subsection.

(ii) Notice of assessment must be sent by certified mail, return receipt requested, to each member within 30 days of the board of directors' meeting at which the assessment was levied. Notice shall be forwarded to the office address of the member as it appears on the books of the association. The notice must state the member's allocated amount of assessment and must inform each member of the sanctions imposed by clause (iii) of this subparagraph for the failure to pay the assessment within the time prescribed by this section.

(iii) Each member must remit to the association payment in full of its assessed amount within 30 days of receipt of notice of assessment. If the association has not received payment in full of a member's allocated amount of assessment within 40 days of notice of the receipt by the member of the notice of assessment, then the association must report to the Commissioner the fact that the assessment has not been paid. The Commissioner may take such actions as are permitted under the Insurance Code, including, but not limited to, actions authorized by Insurance Code Chapter 82, to consider revocation of the certificate of authority of the delinquent member. Any action by

the Commissioner will in no way affect the right of the association to proceed against the member in any court of law or equity in the United States for any remedy provided by law or contract to the association, including, but not limited to, the right to collect the member's assessment. A member, by mailing payment of its allocated amount of assessment as provided by this section, does not waive any right it may have to contest the computation of its allocated amount of assessment. A contest does not, however, toll the time in which the assessment must be paid, or the report is made to the Commissioner.

(5) Basis of computation of deficit, surplus, and assessments. The computation of the deficit or surplus in operations of the association and the computation of assessment of members and policyholders must be computed on a calendar-year basis in accordance with the reporting requirements of the annual statement filed with the department.

(e) Premium tax credit (offset) for member assessments. To the extent that a member has been assessed and has paid one or more assessments as contemplated by this subchapter and has not received reimbursement from the association for the assessments, that member, as provided for in Insurance Code §2203.251, must be allowed a credit against its premium taxes under Insurance Code Chapter 221, for all lines of insurance that the member is writing in Texas that are subject to a premium tax under Insurance Code Chapter 221. The tax credit, in the aggregate amount of the assessments, plus interest at a rate to be approved by the Commissioner, must be allowed at a rate of 20% per year for five successive years following the year in which the deficit was sustained and, at the option of the member, may be taken over an additional number of years. For purposes of this premium tax offset, expense fees paid pursuant to §5.2002(b)(1) and (2) of this title (relating to Operation of the Texas Medical Liability Insurance Underwriting Association) are deemed to be assessments.

(f) Auditing of members. The association may audit the policies, records, book of accounts, documents, and related material of any member that are necessary to carry out its functions. Such material must be provided by the members in the form and with the frequency reasonably required by rules adopted by the Commissioner.

§5.2004. Medical Liability Insurance and General Liability Insurance.

(a) The policy.

(1) Approval. The procedures regarding rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to insurance written by the association and related statistics must comply with Insurance Code Chapter 2203, Subchapter E.

(2) Duration of policies.

(A) All policies issued by the association must be written for a term of one year or less, as determined by the association, to begin at 12:01 a.m. on their respective effective dates.

(B) The association may not issue a policy with an effective date after a date set under Insurance Code Article 21.49-3, §11 for a plan of suspension to become effective and operative.

(C) All policies must be written on forms approved by the department, and must contain a provision that requires, as a condition precedent to settlement or compromise of any claim, the consent or acquiescence of the insured. If, however, the insured refuses to consent to any settlement recommended in writing by the association and elects to contest or continue any legal proceedings, the liability of the association must not exceed the amount for which the claim could have been settled plus the cost and expenses incurred up to the date of the refusal.

(3) Installment payment plan. The association may offer an installment plan for coverage obtained through the association or for payment of the stabilization reserve fund charge. The association may require the policyholder to pay the stabilization reserve fund charge as an annual lump sum.

(4) Limits of liability.

(A) No individual or organization may be insured by a policy issued, or caused to be issued, by the association for an amount exceeding a total of $1 million per occurrence (for all coverages combined) and $3 million aggregate per annum (for all coverages combined). As used in this paragraph, the terms "individual" and "organization" mean each physician, health care provider, health care practitioner, and health care facility holding a separate license or accreditation from the appropriate licensing or accrediting agency as applicable.

(B) If provided, general liability limits must be the same as medical liability limits subject to the maximum policy limits specified in subparagraph (A) of this paragraph.

(5) Special provisions.

(A) The association may issue policies with deductibles.

(B) The association may issue policies subject to retrospective rating plans.

(C) Policies of excess medical liability insurance and excess general liability insurance written by the association must:

(i) be on a following form basis to the underlying medical liability insurance or underlying general liability insurance coverage over which it is written;

(ii) be issued subject to review of the underlying coverage if review is deemed necessary by the association or its representatives;

(iii) not be issued in those cases where the net retention at risk by the primary carrier is less than $100,000 per occurrence or less than $300,000 aggregate per annum after applying any applicable deductible;

(iv) be issued only when the underlying insurance coverage is underwritten by a member of the association and the underlying insurance coverage does not have a deductible in excess of $25,000;

(v) terminate automatically if the underlying primary medical liability insurance policy or underlying primary general liability insurance is not maintained for any reason, except exhaustion by payment of a loss or losses. If the aggregate underlying primary medical liability insurance or general liability insurance is exhausted by the payment of a loss or losses occurring during the policy period, the insurance provided by the excess policy must apply in the same manner as if the underlying primary insurance was in full force and effect;

(vi) not be accepted for a hospital or other institutional health care provider or health care facility if the applicant does not provide evidence that all physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners with staff privileges are insured for their individual medical liability with limits of liability of at least $100,000 per occurrence and $300,000 aggregate per annum; and

(vii) not be accepted for physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners who employ or contract with

other physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners if the applicant does not provide evidence that all employed physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners who are eligible to obtain coverage from the association are insured for their individual medical liability with limits of liability of at least $100,000 per occurrence and $300,000 aggregate per annum.

(D) No hospital or other institutional health care provider, health care facility or physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners that have employed or contracted physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners can be accepted for coverage in the association without evidence that all physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers, or health care practitioners with staff privileges or employed or contracted by the applicant are insured for their individual medical liability with limits of at least $100,000 per occurrence and $300,000 aggregate per annum.

(E) For purposes of this section, the term "health care providers or health care practitioners" does not include personnel at or below the level of employed registered nurse. Insurance required for physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, health care practitioners, or other health care providers with hospital staff privileges or employed or contracted by the applicant must be limited to any one of the following entities:

(i) an insurance company authorized and licensed to write and writing health care liability or medical liability insurance in Texas under Insurance Code Chapter 801;

(ii) an insurance company eligible to write and writing health care liability or medical liability insurance in Texas as a surplus lines carrier under Insurance Code Chapter 981;

(iii) the Texas Medical Liability Insurance Underwriting Association, established under Insurance Code Chapter 2203;

(iv) a self-insurance trust created to provide health care liability or medical liability insurance, established under Insurance Code Chapter 2212;

(v) a risk retention group or purchasing group writing health care liability or medical liability insurance in Texas, registered under Insurance Code Chapter 2201;

(vi) a plan of self-insurance of an institution of higher education that provides health care liability or medical liability coverage, established under Education Code Chapter 59; or

(vii) a plan of self-insurance that meets each of the following criteria:

(I) the plan's liabilities must be fully funded, and the plan must be solvent. The plan must have a minimum net worth equal to the lesser of $1 million or that amount of net worth that results in a capitalization ratio of 5%. As used in this subclause, "net worth" is calculated by determining the excess, if any, of the plan's total assets over the plan's total liabilities. As used in this subclause, "capitalization ratio" means the ratio of the plan's net worth (as the numerator) to the plan's total assets (as the denominator). Notwithstanding the preceding, the net worth requirements in this subclause do not apply to a plan that lawfully has taxing authority over a segment of the Texas public, provided that the taxing authority may be used to meet the plan's liabilities and other obligations;

(II) the plan must annually obtain from a qualified actuary who is a member in good standing of the American Academy of Actuaries an actuarial analysis that reflects that its operations are viable. Notwithstanding the preceding, an actuarial opinion filed with the department under Insurance Code §802.002 may be accepted for purposes of this subsection;

(III) financial statements of the plan must annually be audited by an independent certified public accountant who is a member in good standing of the American Institute of Certified Public Accountants (AICPA). The audits must use generally accepted auditing standards and must result in a report that attests to whether the financial statements comply with generally accepted accounting principles adopted by the AICPA. Notwithstanding the preceding, an audit report filed with the department under Insurance Code Chapter 401 may be accepted for purposes of this subsection; and

(IV) the plan must have competent and trustworthy management who are generally knowledgeable of insurance matters. A plan is not eligible if a plan officer or member of the plan's board of directors or similar governing body has been convicted of a felony involving moral turpitude or breach of fiduciary duty.

(6) Rates, rating plans, and rating rules applicable. The rates, rating plans, rating rules, rating classifications, and territories applicable must be those established under Insurance Code Chapter 2203, Subchapter E.

(b) Application, underwriting standards, and acceptance or rejection.

(1) Eligibility and forms.

(A) Any physician and any health care provider as defined in Insurance Code §2203.002 and any health care practitioner and health care facility as defined in Insurance Code §2203.103 that falls within any of the categories of physicians, health care providers, health care practitioners, or health care facilities established by order of the Commissioner from time to time as being eligible to obtain coverage from the association is entitled to apply to the association for a medical liability insurance policy. However, if the applicant is a partnership, professional association, or corporation (other than a nonprofit corporation certified under Occupations Code Chapter 162) composed of eligible health care providers or health care practitioners (such as physicians, dentists, or podiatrists), all of the partners, professional association members, or shareholders must also be individually insured in the association.

(i) Any category of physician or health care provider, which by order of the Commissioner has been excluded from eligibility to obtain coverage from the association, may be eligible for coverage in the association if, after at least 10 days' notice and an opportunity for a hearing, the Commissioner determines that medical liability insurance is not available for the category of physician or health care provider. In addition, a for-profit or not-for-profit nursing home or assisted living facility not otherwise eligible for coverage from the association is eligible for coverage if the nursing home or assisted living facility demonstrates, in accordance with the requirements of the association, that the nursing home or assisted living facility made a verifiable effort to obtain coverage from authorized insurers and eligible surplus lines insurers and was unable to obtain substantially equivalent coverage and rates.

(ii) All applications for medical liability and general liability insurance must be made on forms prescribed by the board of directors of the association and approved by the department. The application forms must contain a statement as to whether or not there are any unpaid premiums, assessments, or stabilization reserve fund

charges due from the applicant for prior insurance. Application may be made on behalf of the applicant by an agent authorized under Insurance Code Chapter 4051. The agent need not be appointed by a servicing company.

(B) The association may issue a general liability insurance policy to an applicant specified in subparagraph (A) of this paragraph only if the association issues to that applicant a medical liability insurance policy.

(2) Licensed agent. If a liability insurance policy is written through a licensed agent, then:

(A) the commission paid to the licensed agent must be 10% of the first $1,000 of the policy premium, 5% of the next $9,000 of the policy premium, and 2% of the policy premium in excess of $10,000 for policies written by the association on the form approved for physicians and noninstitutional health care providers;

(B) the commission paid to the licensed agent must be 12.5% of the first $2,000 of the policy premium, 7.5% of the next $3,000 of the policy premium, 5% of the next $15,000 of the policy premium, and 2% of the policy premium in excess of $20,000 for policies written by the association on the form approved for hospitals and other institutional health care providers;

(C) the commission paid to the licensed agent must be 10% of the policy premium for an excess liability insurance policy written by the association for a physician or any other health care provider as defined in Insurance Code §2203.002. The commission, however, may not exceed $250 for a policy written on the form approved for physicians and other noninstitutional health care providers, and may not exceed $500 for a policy written on the form approved for hospitals and other institutional health care providers; and

(D) no commission may be payable for any assessment payable by the policyholder by reason of a deficit incurred by the association, including charges for the stabilization reserve funds. On cancellation, the agent must refund any unearned portion of the commission to the association.

(3) Submission. Application for medical liability or general liability insurance on the prescribed form must be accompanied by tender of the amount of the deposit premium and the charge for the stabilization reserve fund required to bind the policy.

(4) Underwriting standards.

(A) On initial application and every reapplication to the association, the following underwriting standards must apply for policies of medical liability insurance written by the association:

(i) all applicants to the association must be currently licensed, chartered, certified, or accredited to practice or provide their respective health care services in Texas;

(ii) all health care provider, practitioner and facility and physician applicants to the association must provide evidence of inability to obtain medical liability coverage. The evidence must be two written rejections by carriers licensed and engaged in writing the coverage applied for in Texas or by a self-insurance trust created under Insurance Code Chapter 2212;

(iii) all for-profit and not-for-profit nursing home and assisted living facility applicants to the association must provide evidence of inability to obtain coverage from authorized insurers and eligible surplus lines insurers for substantially equivalent coverage and rates. The evidence must be two written rejections by insurers licensed and engaged in writing the coverage applied for in Texas or by eligible surplus lines insurers. For purposes of this subsection, a rejection has occurred if the applicant:

(I) made a verifiable effort to obtain insurance coverage from authorized insurers and eligible surplus lines insurers; and

(II) was unable to obtain substantially equivalent insurance coverage and rates.

(iv) any material misrepresentation in the application for coverage must be cause to decline coverage on discovery by the association or its authorized representative;

(v) each application must be accompanied by authorization for and consent to investigations of material information bearing on the moral character, professional reputation, and fitness to engage in the activities embraced by the applicant's license with respect to applicants who are to be provided coverage on the form approved for physicians and noninstitutional health care providers, or the reputation, method of operation, accident prevention programs, and fitness to engage in the activities embraced by the applicant's license, charter, certificate, or accreditation for applicants who are to be provided coverage on the form approved for hospitals and other institutional health care providers, including authorization to every person or entity, public or private, to release to the association any documents, records, or other information bearing on this information;

(vi) no coverage may be afforded either by binder or by policy issuance to any applicant whose license, charter, certificate, or accreditation has been ordered canceled, revoked, or suspended, provided that, if the order has been probated by the appropriate regulatory body or licensing agency, then the probation may be reviewed by the association for a determination whether and on what basis coverage may be afforded in the association;

(vii) the applicant, to be eligible for coverage in the association, must comply with all significant recommendations arising out of a loss control or risk management report either before binding coverage or as soon as practicable concurrently with coverage;

(viii) there must be no unpaid, uncontested premium; assessment; or charge due from the applicant; and

(ix) there must be no unpaid deductible, in whole or part, owed to the association.

(5) Receipt of the application. On receipt of the application, the required deposit premium, and the applicable stabilization reserve fund charge, the association must, within 30 days:

(A) cause a binder or insurance policy to be issued; or

(B) advise the agent or applicant that the applicant does not meet the underwriting standards of the association, in which case the association must indicate the reasons the applicant does not meet the underwriting standards.

(c) Cancellation, nonrenewal, and notice.

(1) Cancellation by the association. The association may not cancel an insurance policy except for:

(A) nonpayment of premium;

(B) nonpayment of the applicable stabilization reserve fund charge;

(C) nonpayment of assessment;

(D) evidence of fraud or material misrepresentation;

(E) cause that would have been grounds for nonacceptance of the risk under this subchapter had the cause been known to the association at the time the policy was issued;

(F) any cause arising after the policy is issued that would have been grounds for nonacceptance of the risk under this subchapter had the cause existed at the time of acceptance; or

(G) noncompliance with reasonable loss control or risk management recommendations under subsection (b)(4)(A)(vii) of this section. On cancellation of an insurance policy by the association, the association must refund to the insured the unearned portion of any paid premium and, if canceled within the 90th day of coverage, the unearned portion of the paid fund charges under Insurance Code Chapter 2203, Subchapter G on a pro rata basis, provided that all assessments and fund charges earned under Insurance Code Chapter 2203, Subchapter G have been fully paid; otherwise, only that portion of unearned premium over any unpaid assessment and fund charges under Insurance Code Chapter 2203, Subchapter G will be refunded. Policyholder assessments and fund charges under Insurance Code Chapter 2203, Subchapter G are fully earned on payment; therefore, except as provided in Insurance Code Chapter 2203 or §5.2003(c)(2) of this title (relating to Members and Policyholders Participation in the Texas Medical Liability Insurance Underwriting Association), no portion is refundable.

(2) Cancellation by the insured. An insurance policy may be canceled at any time:

(A) by the insured, on written request for cancellation of the policy; or

(B) by an insurance premium finance company in accordance with Insurance Code Chapter 651.

(3) Refund of unearned portion of paid premium. The association must refund the unearned portion of any paid premium and, if canceled within the 90th day of coverage, the unearned portion of the paid fund charges under Insurance Code Chapter 2203, Subchapter G according to the approved short-rate table, provided all assessments and fund charges under Insurance Code Chapter 2203, Subchapter G earned have been fully paid; otherwise, only that portion of the unearned premium over any unpaid assessment and fund charges under Insurance Code Chapter 2203, Subchapter G will be refunded. Policyholder assessments and fund charges under Insurance Code Chapter 2203, Subchapter G are fully earned on payment; therefore, except as provided in Insurance Code Chapter 2203 or §5.2003(c)(2) of this title, no portion is refundable.

(4) Exhausted policy limits. If there is an outstanding claim or claims under any insurance policy on which a reserve or reserves have been established, which in the aggregate or when combined with losses previously paid under the policy equal or exceed the aggregate limits of coverage under the policy, the association must notify the insured. At the insured's option, the policy may be canceled. If the policy is canceled, the premium must be considered fully earned and the insured may apply for a new policy to be effective concurrently with the termination date of the canceled policy.

(5) Notice of cancellation, nonrenewal, or premium increase.

(A) The association may cancel a medical liability insurance policy and general liability insurance policy, or decline to renew a policy for any reason listed in paragraph (1) of this subsection at any time within the first 90 days from the effective date of the policy by sending 90 days written notice to the insured.

(B) The association may cancel a medical liability insurance policy and general liability insurance policy or decline to renew a policy for nonpayment of premium, assessments, or fund charges under Insurance Code Chapter 2203, Subchapter G, or for loss of license, charter, certification, or accreditation at any time during the policy period by sending 10 days' written notice to the insured.

(C) Notice of cancellation or nonrenewal under subparagraphs (A) and (B) of this paragraph must contain a statement of the reason for the cancellation or nonrenewal and a statement that the insured has the right to appeal under Insurance Code Chapter 2203, Subchapter I.

(D) The association must give at least 90 days' written notice to an insured before increasing the premium by reason of a rate increase on the insured's medical liability insurance policy. The notice must state the amount of the increase.

(6) General liability insurance. A general liability insurance policy issued by the association under Insurance Code §2203.151(b) automatically terminates on the same effective date and time as the termination of the medical liability insurance policy.

(d) Suspension of policy. The association must, on written request from a policyholder subject to the Servicemembers Civil Relief Act of 2003 (50 United States Code App. §§501, et seq.), suspend the policy issued by the association, in accordance with the Servicemembers Civil Relief Act of 2003.

(e) Removal of risks. Any member, or self-insurance trust established under Insurance Code Chapter 2212, at any time, on written consent from the insured filed with the association, may write the risk as regular business, in which event the association must cancel its policy pro rata as of a date and time specified by the manager of the association. The association will require written confirmation that the member or self-insurance trust is taking the risk out of the association before allowing pro rata cancellation.

(f) Payment of claims.

(1) Report of loss. All losses must be reported to the association in the manner prescribed by the board of directors.

(2) Adjustment of loss. All losses must be adjusted in the manner designated by the board of directors subject to the provisions of this plan of operation and the insurance laws of Texas.

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

Filed with the Office of the Secretary of State on August 27, 2020.

TRD-202003567
James Person
General Counsel
Texas Department of Insurance
Effective date: September 16, 2020
Proposal publication date: July 24, 2020
For further information, please call: (512) 676-6584

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

The Commissioner of Insurance adopts amendments to 28 TAC §5.204, relating to Motor Vehicle Safety Responsibility, and the repeal of 28 TAC §5.208, relating to Disclosures for Named Driver Automobile Insurance Policies. The amendments and repeal implement changes made by House Bill 259, 86th

Legislature, Regular Session (2019), which prohibits named driver auto policies. The amendments and repeal are adopted without changes to the proposed text published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 19). The rule and repeal will not be republished.

REASONED JUSTIFICATION. The amendments to §5.204 and the repeal of §5.208 are necessary to implement HB 259. HB 259 prohibits Texas automobile insurers from delivering, issuing for delivery, or renewing a named driver policy that is not an operator's policy. An operator's policy is a policy that covers the named insured when operating an automobile the insured does not own.

HB 259 amends Insurance Code Chapter 1952 to add Subchapter H, consisting of §§1952.351 - 1952.353, and repeals §1952.0545. Section 1952.351 provides definitions for the new subchapter, and §1952.352 addresses applicability of the subchapter. Section 1952.353 prohibits an insurer writing automobile insurance in Texas from delivering, issuing for delivery, or renewing named driver auto policies. Section 1952.0545 establishes required disclosures for named driver policies. The named driver prohibition applies to policies issued, issued for delivery, or renewed on or after January 1, 2020.

The amendments and repeal will reduce confusion by eliminating the now unnecessary requirements for named driver automobile insurance, including disclosures from the agent or insurer and on the proof of insurance card and the policy. The amendments also include nonsubstantive edits to update the language to current agency style.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

Commenters: TDI received one written comment in support of the proposal from the Texas Independent Automobile Dealers Association (TIADA).

Comment: A commenter supports the rule repealing named driver policies because of the issues they create for policyholders, lienholders, and the general public.

Agency Response to Comment: TDI appreciates the supportive comment.

SUBCHAPTER A. AUTOMOBILE INSURANCE

DIVISION 3. MISCELLANEOUS INTERPRETATIONS

28 TAC §5.204

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §5.204 under Insurance Code §1952.353 and Insurance Code §36.001.

Section 1952.353 prohibits an insurer from delivering, issuing for delivery, or renewing a named driver policy unless the named driver policy is an operator's policy.

Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on August 26, 2020.

TRD-202003557
James Person
General Counsel
Texas Department of Insurance
Effective date: September 15, 2020
Proposal publication date: May 8, 2020
For further information, please call: (512) 676-6584

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28 TAC §5.208

STATUTORY AUTHORITY. TDI repeals §5.208 under Insurance Code §1952.353 and Insurance Code §36.001.

Insurance Code §1952.353 prohibits an insurer from delivering, issuing for delivery, or renewing a named driver policy unless the named driver policy is an operator's policy.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on August 26, 2020.

TRD-202003556
James Person
General Counsel
Texas Department of Insurance
Effective date: September 15, 2020
Proposal publication date: May 8, 2020
For further information, please call: (512) 676-6584

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 290. PUBLIC DRINKING WATER

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §290.39 and §290.122.

Amended §290.39 and §290.122 are adopted *without changes* to the proposed text as published in the May 15, 2020, issue of the *Texas Register* (45 TexReg 3207) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 3552, passed by the 86th Texas Legislature, 2019, authored by the Honorable J.D. Sheffield, Texas House of Representatives, amends Texas Health and Safety Code (THSC), §341.033 to require an owner, agent, manager, operator, or other person in charge of public water systems to notify their customers prior to permanently terminating the addition of fluoride to drinking water. HB 3552 took effect on September 1, 2019. This rulemaking adopts the amendments to §290.39

and §290.122. While HB 3552 lists owner, agent, manager, operator, or other person in charge of public water systems, the adopted amendments to §290.39 and §290.122 lists owners or operators in order to remain consistent with current TCEQ rules.

Section by Section Discussion

The commission is also correcting references and typographical errors as required by *Texas Register* formatting requirements.

§290.39, General Provisions

The commission adopts the addition of §290.39(j)(5) to require public water systems to notify the executive director of proposed termination of fluoridation prior to notifying customers of the water system.

§290.122, Public Notification

The commission adopts the addition of §290.122(j) to require public water systems to notify their customers 60 days prior to terminating the fluoridation of the drinking water. This notification will be required to be sent to customers using direct delivery methods. The water system will be required to send the executive director a copy of the public notice and Certificate of Delivery, certifying that the public notice was sent to customers.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks 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 the state or a sector of the state."

The adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the specific intent of the rule is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to implement HB 3552 by requiring notification to the executive director and the customers of a public water system prior to a permanent termination of the addition of fluoride to drinking water. Additionally, it is not a rulemaking 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 the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted rules will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Additionally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of water supply systems; 2) does not exceed any express requirements of THSC, Chapter 341 relating to the minimum standards of sanitation and health protection measures; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received no comments.

Takings Impact Assessment

The commission evaluated these rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these rules is to implement HB 3552 relating to certain notice requirements regarding fluoridation of a water supply system. The adopted rules will advance this stated purpose by making the commission's rules consistent with HB 3552. The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply because this action does not affect private real property.

Promulgation and enforcement of these rules will constitute neither a statutory nor a constitutional taking of private real property. These rules will not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking will not burden nor restrict the owner's right to property. These provisions will not impose any burdens or restrictions on private real property. Therefore, the amendments do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the Coastal Management Program during the public comment period. The commission received no comments.

Public Comment

The comment period closed on June 16, 2020. The commission received no comments.

SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §290.39

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to perform any act necessary to carry out its ju-

risdiction; TWC, §5.103 and §5.105, which establish the commission's authority to adopt any rules necessary to carry out its powers and duties; and Texas Health and Safety Code (THSC), §341.0315, which requires public drinking water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The adopted amendment implements House Bill 3552 passed by the 86th Texas Legislature, 2019.

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

Filed with the Office of the Secretary of State on August 28, 2020.

TRD-202003569
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: September 17, 2020
Proposal publication date: May 15, 2020
For further information, please call: (512) 239-1806

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SUBCHAPTER F. DRINKING WATER STANDARDS GOVERNING DRINKING WATER QUALITY AND REPORTING REQUIREMENTS FOR PUBLIC WATER SYSTEMS

30 TAC §290.122

Statutory Authority

The amendment is adopted under TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to perform any act necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which establish the commission's authority to adopt any rules necessary to carry out its powers and duties; and Texas Health and Safety Code (THSC), §341.0315, which requires public drinking water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The adopted amendment implements House Bill 3552 passed by the 86th Texas Legislature, 2019.

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

Filed with the Office of the Secretary of State on August 28, 2020.

TRD-202003570
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: September 17, 2020
Proposal publication date: May 15, 2020
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER C. CRUDE OIL PRODUCTION TAX

34 TAC §3.34

The Comptroller of Public Accounts adopts the repeal of §3.34, concerning exemption of certain royalty interest from oil occupation taxes and regulation pipeline taxes, without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4958). The rule will not be republished.

The comptroller repeals the existing §3.34 in order to adopt new §3.34 with significantly expanded content. The repeal of §3.34 will be effective as of the date the new §3.34 takes effect.

The comptroller did not receive any comments regarding adoption of the amendment.

The repeal is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2 (State Taxation).

The repeal implements Tax Code, Chapter 202 (Oil Production Tax).

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

Filed with the Office of the Secretary of State on August 26, 2020.

TRD-202003553
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: September 15, 2020
Proposal publication date: July 17, 2020
For further information, please call: (512) 475-2220

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34 TAC §3.34

The Comptroller of Public Accounts adopts new §3.34, concerning exemption of governmental entities and two-year inactive wells, without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4958). The rule will not be republished.

The new section replaces existing §3.34, concerning exemption of certain royalty interests from oil occupation taxes and regulation pipeline taxes, which the comptroller is repealing. New §3.34 implements Senate Bill 533, 86th Legislature, 2019, effective September 1, 2019, which amended Tax Code, §202.056 (Exemption for Oil and Gas from Wells Previously Inactive), regarding the severance tax exemption for oil and gas production from two-year inactive wells.

In subsection (a), the comptroller defines the terms "casinghead gas," "commission," and "hydrocarbons" using the definitions found in Tax Code, Chapter 201 (Gas Production Tax) and

Chapter 202 (Oil Production Tax). The comptroller provides a definition for the term "two-year inactive well," deriving the language for this term from Tax Code, §202.056(a)(4). The language provides that a well can only be certified as a two-year inactive well on or after September 1, 2019.

In subsection (b), the comptroller outlines an exemption for certain entities, including the federal and Texas government and their subdivisions.

In subsection (c), the comptroller provides the title and language based on Tax Code, §202.156 (Tax Borne Ratably), which provides that the tax shall be borne ratably by all "interested parties." Interested parties are determined "without regard to title to the oil either before or after severance; and without regard to any arbitrary classification or nomenclature." See *Sheppard v. Stanolind Oil & Gas Co.,* 125 S.W.2d 643, 648 (Tex. Civ. App.--Austin 1939, writ ref'd).

In subsection (d), the comptroller provides information regarding two-year inactive wells, including: the comptroller's approval process for the exemption of a two-year inactive well in paragraph (1); the beginning date and duration of the exemption in paragraph (2); and the process to receive a tax credit for payments made at the full rate under the Tax Code in paragraph (3).

In subsection (e), the comptroller provides information regarding recompleted certified two-year inactive wells, including the duration of the exemption and the application process for the exemption.

In subsection (f), the comptroller provides the two-year inactive well exemption does not extend to the oil-field regulatory cleanup fee.

In subsection (g), the comptroller outlines penalties applicable to two-year inactive wells whose certification the Railroad Commission revoked and for which the taxpayer continues to claim the credit.

The comptroller did not receive any comments regarding adoption of the amendment.

The comptroller adopts the new section under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2 (State Taxation).

The new section implements Tax Code, §202.056 (Exemption for Oil and Gas from Wells Previously Inactive), regarding exemption for oil and gas from wells previously inactive.

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

Filed with the Office of the Secretary of State on August 26, 2020.

TRD-202003555
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: September 15, 2020
Proposal publication date: July 17, 2020
For further information, please call: (512) 475-2220

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SUBCHAPTER JJ. CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1202

The Comptroller of Public Accounts adopts an amendment to §3.1202, concerning warning notice signs, without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4960). The rule will not be republished. The amendment updates the warning notice sign size minimum requirements to match new warning notice signs provided by the comptroller.

The comptroller amends subsection (d)(2)(A) to include new minimum size requirements for warning signs. The comptroller reduces the minimum required size measurements from 14 to 11 inches in length.

No comments were received regarding adoption of the amendment.

Statutory Authority

This amendment is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Health and Safety Code, §161.084 (Warning Notice).

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

Filed with the Office of the Secretary of State on August 25, 2020.

TRD-202003507
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: September 14, 2020
Proposal publication date: July 17, 2020
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.11

The Texas Department of Public Safety (the department) adopts amendments to §4.11, concerning General Applicability and Definitions. This rule is adopted without changes to the proposed text as published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5131). The rule will not be republished.

The adopted amendments harmonize updates to Title 49, Code of Federal Regulation with those laws adopted by Texas. The Federal Motor Carrier Safety Administration has granted an exemption and this amendment provides clarification for commercial driver license exemptions for covered farm vehicles.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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

Filed with the Office of the Secretary of State on August 24, 2020.

TRD-202003494
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: September 13, 2020
Proposal publication date: July 24, 2020
For further information, please call: (512) 424-5848


Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts proposes to review Texas Administrative Code, Title 34, Part 1, Chapter 3, Tax Administration. The comptroller is conducting this review in accordance with Government Code, §2001.039. The review will include, at the minimum, whether the reasons for readopting continue to exist.

The comptroller will accept comments regarding the review. The comment period will last for 30 days following the publication of this notice in the *Texas Register.*

You may submit any questions or written comments pertaining to this rule review to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

TRD-202003571
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: August 28, 2020

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Department of Family and Protective Services

Title 40, Part 19

The Department of Family and Protective Services (DFPS) files this Notice of Intention to Review all rule sections of the following subchapters in Texas Administrative Code, Title 40, Part 19, Chapter 705, Adult Protective Services: Subchapter A, Definitions; Subchapter D, Eligibility; Subchapter G, Family Violence; Subchapter J, Release Hearings; Subchapter K, Training and Education; Subchapter L, Risk Assessment; Subchapter M, Confidentiality and Release of Records; Subchapter N, Public Awareness; and Subchapter O, Pilot Program.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

DFPS has conducted a review of the rules in Chapter 705 and has preliminarily determined that the reasons for adopting the chapter continue to exist with the exception of the content in Subchapter O, which is now obsolete.

DFPS will accept comments regarding whether the reasons for adopting these rules continue to exist. Comments regarding changes to the rules in Chapter 705 may be submitted, but will not be considered for rule amendments as part of this review. DFPS may consider such comments in a future rulemaking action.

Elsewhere in this issue of the *Texas Register,* DFPS contemporaneously proposes new Chapter 705, Adult Protective Services, and the repeal of Chapter 705, Adult Protective Services.

Comments and questions on this proposed review must be submitted within 30 days of publication of the proposal in the *Texas Register.* Electronic comments and questions may be submitted to Angela Medina, APS Policy Manager at Angela.Medina@dfps.state.tx.us. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services 19R11, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

TRD-202003517
Tiffany Roper
General Counsel
Department of Family and Protective Services
Filed: August 25, 2020

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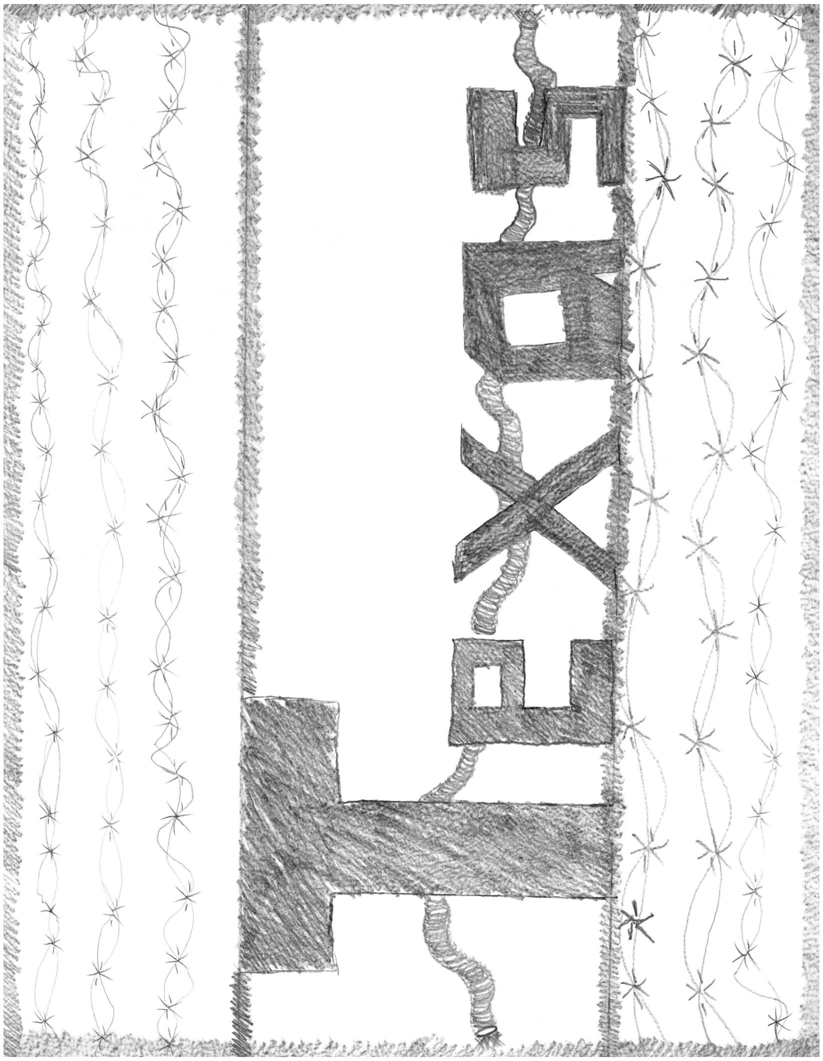
Texas

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Alamo Area Metropolitan Planning Organization

Request for Proposals: Subregional Planning Study

The Alamo Area Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms to conduct a Subregional Planning Study.

A copy of the Request for Proposals (RFP) may be obtained by downloading the RFP and attachments from the MPO's website at *www.alamoareampo.org* or calling Allison Blazosky, Transportation Planning Program Manager, at (210) 227-8651. Anyone wishing to submit a proposal must email it by 12:00 p.m. (CT), Friday, October 16, 2020, to the MPO office at *aampo@alamoareampo.org*.

Reimbursable funding for this study, in the amount of $500,000, is contingent upon the availability of Federal transportation planning funds.

TRD-202003607
Jeanne Geiger
Deputy Director
Alamo Area Metropolitan Planning Organization
Filed: September 1, 2020

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Comptroller of Public Accounts

Correction of Error

The Comptroller of Public Accounts published proposed amendments to 34 TAC §20.115 in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6051). Due to an error by the Texas Register, punctuation was left out of the text for subsection (c). The correct text for subsection (c) should read as follows:

(c)[~~(D)~~] Based upon the review provided for in subsection (b) of this section, the comptroller may revise [~~edit~~] the performance report or grade. [~~as necessary to insure as accurate and responsible contract report as possible; and~~]

TRD-202003600

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Notice of Public Hearing on Proposed Statewide Procurement and Support Services Rule Amendment Concerning Performance Reporting

The Comptroller of Public Accounts will conduct a public hearing to receive comments from interested persons concerning proposed amendment to 34 Texas Administrative Code Section 20.509, Performance Reporting. The proposed amendment was published in the *Texas Register* (45 TexReg 6052) on August 28, 2020.

The hearing is scheduled for Friday, September 25, 2020 at 10:00 a.m. There is no physical location for this meeting. To access the online public meeting by web browser, please enter the following URL into your browser:

https://txcpa.webex.com/txcpa/j.php?MTID=mc9ba5612e77f0a967bab0fcb0051ceef. To join the meeting by computer or cell phone using the Webex app, use the access code 146 778 0726. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Office of the Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by September 24, 2020.

Any interested person may appear and offer comments or statements. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member where possible.

Persons with disabilities who plan to participate in this meeting and who may need auxiliary aids or services should contact Mr. Gerard MacCrossan at Gerard.MacCrossan@cpa.texas.gov. Requests should be made as far in advance as possible so that appropriate arrangements can be made.

Persons who choose not to provide comments during this public hearing may still provide written comments to the Comptroller. Written comments on the proposal may be submitted to Ms. Tosca M. McCormick, Office of the Comptroller of Public Accounts, P.O. Box 13186 Austin, Texas 78701-3186 or by email to Tosca.McCormick@cpa.texas.gov. The deadline for submission of written comments is Monday, September 28, 2020.

TRD-202003588
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Filed: August 31, 2020

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/07/20 - 09/13/20 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/07/20 - 09/13/20 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 09/01/20 - 09/30/20 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 09/01/20 - 09/30/20 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/20 - 12/31/20 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/20 - 12/31/20 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 10/01/20 - 12/31/20 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.101[1] for the period of 10/01/20 - 12/31/20 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 10/01/20 - 12/31/20 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 10/01/20 - 12/31/20 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 10/01/20 - 12/31/20 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/20 - 09/30/20 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed §304.003 for the period of 09/01/20 - 09/30/20 is 5.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-202003606
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 1, 2020

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Texas Education Agency

Request for Applications Concerning the 2021-2023 Early College High School (ECHS) Planning and Implementation Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-20-130 is authorized by General Appropriations Act, Article III, Rider 49, 86th Texas Legislature, 2019.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-20-130 from eligible applicants, which include local educational agencies that serve students in Grades 9-12 or will begin serving students in Grade 9 or students in Grades 9 and 10 in the first year of implementation (2022-2023) and will progressively scale up by adding at least one grade level per year. 2020-2021 Planning, Provisional, and Designated ECHS, P-TECH, and T-STEM campuses are not eligible for this grant. Recipients of the Lone Star STEM Grant are not eligible for the 2021-2023 ECHS Planning and Implementation Grant.

Description. The purpose of the 2021-2023 ECHS Planning and Implementation Grant is to solicit grant applications from eligible applicants who, upon receipt of the grant, will engage in 29 months of ECHS model planning and implementation with support from TEA's selected technical assistance provider to establish the foundational components of the ECHS, as outlined in Texas Education Code, §29.908(b), and 19 Texas Administrative Code §102.1091. The ECHS program may be established as a whole-campus model at a comprehensive high school, a small stand-alone campus, a school-within-a-school model, or other models as chosen by the campus and approved by TEA. Grantees who receive the 2021-2023 ECHS Planning and Implementation Grant will use the first 18 months planning (February 2021 through August 2022) to implement the design elements and requirements aligned to the ECHS Blueprint. Planning grant funds will be utilized to support campus needs for completing the implementation plan and establishing the foundational implementation elements of the ECHS model. Each grantee, with the support of the TEA technical assistance provider, will develop an implementation plan for the 2022-2023 school year, which is the year of required implementation for the ECHS grantee. Grantees are required to begin serving students in the ECHS school beginning in the 2022-2023 school year and to meet design elements and the provisional outcome-based measures detailed in the ECHS Blueprint.

Dates of Project. The 2021-2023 ECHS Planning and Implementation Grant will be implemented during the 2020-2021 school year through the 2022-2023 school year. Applicants should plan for a starting date of no earlier than February 15, 2021, and an ending date of no later than June 15, 2023.

Project Amount. Approximately $910,000 is available for funding the 2021-2023 ECHS Planning and Implementation Grant. It is anticipated that approximately six grants will be awarded ranging in amounts up to $150,000. This project is funded 100% with state funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to echs@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than Thursday, October 1, 2020. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Friday, October 9, 2020. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 11:59 p.m. (Central Time), Tuesday, November 10, 2020, to be eligible to be considered for

funding. TEA will only accept applications by email to competitive-grants@tea.texas.gov.

Issued in Austin, Texas, on September 2, 2020.

TRD-202003622
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: September 2, 2020

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Request for Applications Concerning the 2021-2023 Pathways in Technology Early College High Schools (P-TECH) Planning and Implementation Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-20-114 is authorized by General Appropriations Act, Article III, Rider 66, 86th Texas Legislature, 2019.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-20-114 from eligible applicants, which include local educational agencies that serve students in Grades 9-12 or will begin serving students in Grade 9 or students in Grades 9 and 10 in the first year of implementation (2022-2023) and will progressively scale up by adding at least one grade level per year. Recipients of the 2018-2019 P-TECH and ICIA Planning Grant, 2019-2020 P-TECH and ICIA Planning Grant, 2018-2020 P-TECH and ICIA Success Grant, 2019-2021 P-TECH and ICIA Success Grant, 2020-2022 P-TECH and ICIA Planning and Implementation Grant, or 2020-2022 P-TECH Success Grant are not eligible for the 2021-2023 P-TECH Planning and Implementation Grant. Recipients of the Lone Star STEM Grant are not eligible for the 2021-2023 P-TECH Planning and Implementation Grant. 2020-2021 Planning, Provisional, and Designated ECHS, P-TECH, and T-STEM campuses are not eligible for this grant.

Description. The 2021-2023 P-TECH Planning and Implementation Grant will provide selected applicants funds to engage in 29 months of planning and implementation with support from the TEA-selected technical assistance provider to establish the foundational components of the P-TECH model as outlined in Texas Education Code (TEC), §§29.551-29.556 (P-TECH). Grantees that receive the 2021-2023 P-TECH Planning and Implementation Grant will use the first 18 months (February 2021 to August 2022) for planning to implement the design elements and requirements aligned to the P-TECH Blueprint. P-TECH models allow students the opportunity to earn a high school diploma while simultaneously earning industry certifications, level 1 or level 2 certificates, and/or an associate degree on or before the sixth anniversary of a student's first day of high school at no cost to the student. P-TECH campuses establish strong partnership agreements with local business and industry as well as institutions of higher education (IHEs). The partners serve on the leadership and advisory team to provide support and guidance to the P-TECH campus in resource acquisition, curriculum development, work-based learning, and student/community outreach to ensure a successful academic and career pipeline. In partnership with an IHE as well as community employers, a P-TECH campus provides rigorous academic and work-based learning programs that provide students with clear pathways to regional employment opportunities in response to local workforce needs. P-TECH schools are public schools established under TEC, §29.553 (P-TECH), that enable students in Grade 9, 10, 11, or 12 who are at risk of dropping out, as defined by TEC, §29.081, or who wish to accelerate completion of high school to combine high school courses and college-level courses. Grantees are required to begin serving students in the P-TECH school beginning in the 2022-2023 school year and to meet design elements and outcome-based measures detailed in the P-TECH Blueprint. Grantees are also required to apply for P-TECH designation in the 2021-2022 school year when the designation application window opens to begin serving students in the 2022-2023 school year, as required by this grant.

Dates of Project. The 2021-2023 P-TECH Planning and Implementation Grant will be implemented during the 2020-2021 school year through the 2022-2023 school year. Applicants should plan for a starting date of no earlier than February 15, 2021, and an ending date of no later than June 15, 2023.

Project Amount. Approximately $1,869,000 is available for funding the 2021-2023 P-TECH Planning and Implementation Grant. Approximately $350,000 in additional funds are contingent on the approval of the Texas Higher Education Coordinating Board. Approximately $3 million in additional funds are contingent on the approval of the Texas Workforce Commission. It is anticipated that approximately 34 grants will be awarded ranging in amounts up to $150,000. This project is funded 35% with state funds and 65% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to PTECH@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than Thursday, October 1, 2020. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Friday, October 9, 2020. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 11:59 p.m. (Central Time), Tuesday, December 10, 2020, to be eligible to be considered for funding. TEA will only accept applications by email to competitive-grants@tea.texas.gov.

Issued in Austin, Texas, on September 2, 2020.

TRD-202003623

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: September 2, 2020

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Request for Applications Concerning the 2021-2023 Texas Science, Technology, Engineering, and Mathematics (T-STEM) Planning and Implementation Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-20-131 is authorized by General Appropriations Act, Article III, Rider 48, 86th Texas Legislature, 2019.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications, under RFA #701-20-131 from eligible applicants, which include local educational agencies that serve Grades 6-12 with an active relationship with the feeder middle school(s). The T-STEM Academy must serve a middle grade (6, 7, or 8) and Grade 9 during the implementation year (2022-2023) and will progressively scale up by adding at least one grade level per year in the high school. Recipients of the Lone Star STEM Grant are not eligible for the 2021-2023 T-STEM Planning and Implementation Grant. 2020-2021 Planning, Provisional, and Designated ECHS, P-TECH, and T-STEM campuses are not eligible for this grant.

Description. The 2021-2023 T-STEM Planning and Implementation Grant will provide selected applicants funds to engage in 29 months of planning and implementation with support from the TEA-selected technical assistance provider to establish the foundational components of the T-STEM model as outlined in Texas Education Code, §39.235 (T-STEM), and the K-12 STEM Framework. Grantees that receive the 2021-2023 T-STEM Planning and Implementation Grant will use the first 18 months (February 2021 to August 2022) for planning to implement the design elements and requirements aligned to the T-STEM Blueprint.

Each grantee will also have the support of the TEA technical assistance provider to assist in aligning with the T-STEM Academy Blueprint, and the grantee will be required to describe plans for the T-STEM Academy in the STEM Planning Guide to be submitted to the TEA coordinator at the end of the planning year.

Grantees are required to begin serving students in the T-STEM Academy beginning in the 2022-2023 school year and to meet design elements and outcome-based measures detailed in the T-STEM Academy Blueprint. Grantees are also required to apply for T-STEM designation in the 2021-2022 school year when the designation application window opens to begin serving students in the 2022-2023 school year, as required by this grant.

During the implementation year, grantees will work with their leadership team to complete the sustainability tool to develop a plan to continue the T-STEM Academy after the grant funding has ended. This plan will be submitted to the TEA STEM coordinator at the conclusion of the 2021-2022 school year. More information on STEM programming and the T-STEM model can be found on the TEA STEM webpage.

Dates of Project. The 2021-2023 T-STEM Planning and Implementation Grant will be implemented during the 2020-2021 school year through the 2022-2023 school year. Applicants should plan for a starting date of no earlier than February 15, 2021, and an ending date of no later than June 15, 2023.

Project Amount. Approximately $1,171,000 is available for funding the 2021-2023 T-STEM Planning and Implementation Grant. It is anticipated that approximately seven grants will be awarded ranging in amounts up to $150,000. This project is funded 100% with state funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to tstem@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than Thursday, October 1, 2020. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Friday, October 9, 2020. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 11:59 p.m. (Central Time), Tuesday, November 10, 2020, to be eligible to be considered for funding. TEA will only accept applications by email to competitivegrants@tea.texas.gov.

Issued in Austin, Texas, on September 2, 2020.

TRD-202003624
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: September 2, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 12, 2020.** TWC, §7.075,

also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commissions orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commissions central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **October 12, 2020.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Alejandro Salinas dba Salinas Tire Shop; DOCKET NUMBER: 2020-0100-PST-E; IDENTIFIER: RN101853679; LOCATION: Pittsburg, Camp County; TYPE OF FACILITY: temporarily out-of-service underground storage tank; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (3), by failing to provide an amended registration for any change or additional information to the agency regarding the underground storage tanks (USTs) within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition; 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; and 30 TAC §334.47(a)(2) and 334.54(b), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tempering, or vandalism by unauthorized persons; PENALTY: $5,405; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Guinn Enterprises, Incorporated; DOCKET NUMBER: 2020-0832-AIR-E; IDENTIFIER: RN100623271; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: auto body repair and finishing shop; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $938; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: H & ROZY INC dba K & K Food Mart 1; DOCKET NUMBER: 2020-0601-PST-E; IDENTIFIER: RN101443059; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Hudspeth County Water Control and Improvement District Number 1; DOCKET NUMBER: 2020-0801-MWD-E; IDENTIFIER: RN102181849; LOCATION: Sierra Blanca, Hudspeth County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013858001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(5) COMPANY: INTERNATIONAL BUSINESS CONNECTION, INCORPORATED dba Quick Shop Food Mart; DOCKET NUMBER: 2020-0500-PST-E; IDENTIFIER: RN101434736; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenient store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; and 30 TAC §334.605(a), by failing to re-train the certified Class A/B operator within three years of the last training date; PENALTY: $8,845; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Johnny Berlanga; DOCKET NUMBER: 2020-0329-WOC-E; IDENTIFIER: RN110913571; LOCATION: Three Rivers, Live Oak County; TYPE OF FACILITY: municipal solid waste transfer station; RULES VIOLATED: 30 TAC §30.5(a) and TWC, §37.003, by failing to hold an occupational license before supervising the operation or maintenance of a solid waste facility; PENALTY: $806; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: Kenmark Homes LP; DOCKET NUMBER: 2020-1039-WQ-E; IDENTIFIER: RN111035903; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: MSI Rittiman Incorporated dba K & P 1 Food Store; DOCKET NUMBER: 2020-0615-PST-E; IDENTIFIER: RN101888543; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Norel Animal Nutrition USA, Incorporated; DOCKET NUMBER: 2020-0797-AIR-E; IDENTIFIER: RN110524899; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: animal feed manufacturing plant; RULES VIOLATED: 30 TAC §106.6(b) and §116.110(a), Permit by Rule Registration Number 155546, and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants, and failing to comply with all representations with regard to construction plans, operating procedures, and maximum emission rates; PENALTY: $11,250; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: PRONTO MART INC dba Lakeview Food Mart; DOCKET NUMBER: 2020-0588-PST-E; IDENTIFIER: RN102258019; LOCATION: Rowlett, Dallas County; TYPE OF FACILITY: grocery store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,559; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: RC Lakeside Properties LLC dba RC Lakeside Store; DOCKET NUMBER: 2020-0300-PST-E; IDENTIFIER: RN102020088; LOCATION: Corsicana, Navarro County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.50(d)(9)(A)(iv) and (v) and §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; PENALTY: $17,250; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Redeeming Materials Landscape Supply and Recycling, LLC; DOCKET NUMBER: 2020-0549-MSW-E; IDENTIFIER: RN102071479; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: unauthorized recycling business; RULES VIOLATED: 30 TAC §328.5(b) - (d), by failing to submit a Notice of Intent prior to the commencement of recycling activities, and failing to provide a written cost estimate, at least 90 days prior to receipt of materials for a new facility, in current dollars, showing the cost of hiring a third party to close the facility by disposition of all processed and unprocessed materials, and furthermore, failing to establish and maintain financial assurance for closure of the facility; and 30 TAC §332.8(b)(1), by failing to maintain a setback distance of 50 feet from all property boundaries to the edge of the area receiving, processing, or storing feedstock or finished product; PENALTY: $14,097; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2020-0306-IWD-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: petrochemical manufacturing complex; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0000402000, Outfall Numbers 101 and 104, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $18,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $7,400; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: TABISH ENTERPRISES, INCORPORATED dba Quick Stop 789; DOCKET NUMBER: 2020-0485-PST-E; IDENTIFIER: RN102433778; LOCATION: Mesquite, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Tyler Smith, (512) 239-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202003599
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 1, 2020

Enforcement Orders

An agreed order was adopted regarding HRH Investments, LP dba Phillips 66 Lake June, Docket No. 2018-0138-PST-E on September 1, 2020, assessing $7,229 in administrative penalties with $1,370 deferred. Information concerning any aspect of this order may be obtained by contacting Vas Manthos, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Silver Sand Farm Properties, Ltd. dba Joe Eds Auto Supply, Docket No. 2019-0790-PST-E on September 1, 2020, assessing $4,876 in administrative penalties with $975 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Beverly Hills, Docket No. 2019-1152-WQ-E on September 1, 2020, assessing $1,125 in administrative penalties with $225 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of La Joya, Docket No. 2019-1241-PWS-E on September 1, 2020, assessing $1,237 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John Merculief, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bucek's Country Corner, LLC, Docket No. 2019-1257-PST-E on September 1, 2020, assessing $3,871 in administrative penalties with $774 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Mason, Docket No. 2019-1349-MSW-E on September 1, 2020, assessing $1,500 in administrative penalties with $300 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding R.D. WALLACE OIL CO., INC. dba Petro Products 2 Card System, Docket No. 2019-1353-PST-E on September 1, 2020, assessing $1,926 in administrative penalties with $385 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wastewater Residuals Management, LLC, Docket No. 2019-1770-IWD-E on September 1, 2020,

assessing $4,312 in administrative penalties with $862 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Juan J. Quiroz, Jr., Docket No. 2019-1775-WOC-E on September 1, 2020, assessing $424 in administrative penalties with $84 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding South Texas Children's Home Land Management, Docket No. 2020-0105-PWS-E on September 1, 2020, assessing $3,033 in administrative penalties with $606 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Oxy Vinyls, LP, Docket No. 2020-0120-AIR-E on September 1, 2020, assessing $3,038 in administrative penalties with $607 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TIDWELL WASTEWATER UTILITY, L.L.C, Docket No. 2020-0143-MWD-E on September 1, 2020, assessing $1,250 in administrative penalties with $250 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 1585 A-Plus R.V., Inc., Docket No. 2020-0315-PWS-E on September 1, 2020, assessing $52 in administrative penalties with $10 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mutual First, LLC, Docket No. 2020-0350-AIR-E on September 1, 2020, assessing $963 in administrative penalties with $192 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Midcoast G & P (East Texas) L.P., Docket No. 2020-0366-AIR-E on September 1, 2020, assessing $1,125 in administrative penalties with $225 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202003619
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 2, 2020

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 162322

APPLICATION. Bell Concrete, Inc., 625 7th Street, Sulphur Springs, Texas 75482-2066 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 162322 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at 134 County Road 1063, Greenville, Hunt County, Texas 75401. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. *http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.138568&lng=-96.1623&zoom=13&type=r.* This application was submitted to the TCEQ on August 5, 2020. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on August 17, 2020.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at *www14.tceq.texas.gov/epic/eComment/.* Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Tuesday, October 13, 2020, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: *https://www.gotomeeting.com/webinar/join-webinar* and entering Webinar ID 533-635-835. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the hearing for assistance in accessing the hearing and participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (415) 655-0060 and enter access code 831-939-294. Additional information will be available on the agency calendar of events at the following link:

https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Bell Concrete, Inc., 625 7th Street, Sulphur Springs, Texas 75482-2066, or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: August 26, 2020

TRD-202003616
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 2, 2020

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Notice of Correction to Agreed Order Number 1

In the August 28, 2020, issue of the *Texas Register* (45 TexReg 6145), the Texas Commission on Environmental Quality (commission) published a notice of an Agreed Order, specifically item Number 1, for KM Liquids Terminals LLC. The error is as submitted by the commission.

The reference should be corrected to read: "1,466 degrees Fahrenheit."

For questions concerning this error, please contact Jess Robinson at (512) 239-0455.

TRD-202003605
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 1, 2020

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Notice of Correction to Agreed Order Number 2

In the December 27, 2019, issue of the *Texas Register* (44 TexReg 8371), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 2, for BK Express Incorporated, Docket Number 2019-0889-PWS-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "$1,993."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202003601
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 1, 2020

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Notice of District Petition

Notice issued August 28, 2020

TCEQ Internal Control No. D-01302020-034; Edward Dail via a power of attorney and as executor for Mrs. Nancy L. Dail and as executor of the Estate of Mr. Wallace E. Dail and Mr. James Dail also via a power of attorney and as executor for Mrs. Nancy L. Dail and as executor of the Estate of Mr. Wallace E. Dail (Petitioners) have filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the creation of Collin County Municipal Utility District CR412 (District). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 80.658 acres located within Collin County, Texas; and (3) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of McKinney, Texas. Information provided indicates there are no lienholders on the property to be included in the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of, and control domestic and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in the District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately $12,109,486. In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioner submitted a petition to the City of McKinney, requesting the City's consent to the creation of the District, followed by a petition for the City to provide water and sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and information provided indicates that the Petitioners and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioners to proceed to the TCEQ for inclusion of their Property into the District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202003614
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 2, 2020

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Notice of District Petition

Notice issued August 28, 2020

TCEQ Internal Control No. D-07032020-008; IDV JV-BP South Belt, LLC, a Delaware limited liability company (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 575 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 211.891 acres located within Harris County, Texas; and (4) all of the land within the proposed district is located within the corporate limits of the City of Houston, Texas and not within the corporate limits or extraterritorial jurisdiction of any other city or village in Texas. By Resolution No. 2020-520, passed and adopted on June 23, 2020, the city of Houston, Texas gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of the boundaries, any and all works, improvements, facilities, systems, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial, and commercial purposes; (2) collect, transport, process, dispose of, and control domestic, industrial, and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water or provide adequate drainage in the District; and (4) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend, inside or outside of its boundaries, such additional facilities, systems, plants, equipment, appliances, and enterprises as shall be consonant with the purposes for which the District is created. Additional work and services which may be performed by the District include the purchase, construction, acquisition, provision, operation, maintenance, repair, improvement, extension, and development of a roadway system and park and recreational facilities for the inhabitants of the District. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $25,330,000 (including $20,460,000 for water, wastewater, and drainage plus $4,870,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202003617
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 2, 2020

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Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on

the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 12, 2020.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 12, 2020.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: David Crenshaw dba 281 Speedway Michael Crenshaw, and C&S Promotions LLP dba 281 Speedway; DOCKET NUMBER: 2019-0741-AIR-E; TCEQ ID NUMBER: RN110489234; LOCATION: 7715 North United States Highway 281, Stephenville, Erath County; TYPE OF FACILITY: real property with an automotive racing dirt track; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance dust conditions; PENALTY: $1,312; STAFF ATTORNEY: Vas Manthos, Litigation Division, MC 175, (512) 239-0181; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202003604
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 1, 2020

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Notice of Opportunity to Comment on Shutdown/Default Orders of an Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 12, 2020.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 12, 2020.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone number; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: A & K ENTERPRISES, INC. dba Country Food Store; DOCKET NUMBER: 2019-1245-PST-E; TCEQ ID NUMBER: RN101183861; LOCATION: 9815 State Highway 60 South, Lane City, Wharton County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system. Specifically, respondent did not conduct the annual line leak detector or piping tightness tests; TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other components are operating properly; TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to have the corrosion protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial corrosion protection test expired January 31, 2019; 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to renew a previously issued delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired February 28, 2019; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage, caused by accidental releases arising from the operation of petroleum USTs. Specifically, financial assurance is required for USTs that are not emptied to a depth below 2.5 centimeters or 0.3 percent by weight of the system at full capacity; 30 TAC §334.605(a), by failing to ensure that the certified Class A and B operator is retrained within three years of the operator's last training date. Specifically, respondent's Class A and B operator certification expired on September 11, 2018;

and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: $28,447; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: D&R Housing, LLC; DOCKET NUMBER: 2019-1369-PST-E; TCEQ ID NUMBER: RN101792935; LOCATION: 601 East 11th Street, Plainview, Hale County; TYPE OF FACILITY: temporarily out-of-service (UST) system; RULES VIOLATED: TWC, §26.3475(c)(1) and (d) and 30 TAC §§334.49(a)(2), 334.50(b)(1)(A) and 334.54(b)(1) - (3) and (c)(1), by failing to maintain the facility UST system in compliance with requirements while it is temporarily out of service. Specifically, respondent failed to provide corrosion protection to all underground metal components of the UST system; failed to monitor the UST system for releases; failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner; and failed to ensure vent lines are open and functioning; 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A and B for the facility; 30 TAC §334.7(d) and (d)(1)(a), by failing to notify the agency of any change or additional information regarding the out-of-service USTs with 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current ownership of the USTs; and 30 TAC §37.815, by failing to provide proof-of-financial assurance for two USTs; PENALTY: $17,990; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-202003603
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 1, 2020

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Supplemental Notice of Hearing Valero Refining-Texas, L.P.: SOAH Docket No. 582-20-4163; TCEQ Docket No. 2020-0783-AIR; Permit No. 2501A

APPLICATION.

Valero Refining-Texas, L.P., 9701 Manchester Street, Houston, Texas 77012-2408, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to Air Quality Permit Number 2501A, which would authorize existing emissions of hydrogen cyanide from the Fluid Catalytic Cracking Unit within the Houston Refinery located at 9701 Manchester Street, Houston, Harris County, Texas 77012. In addition to hydrogen cyanide, the existing facility emits the following contaminants: organic compounds, carbon monoxide, sulfur dioxide, nitrogen oxides, sulfuric acid, and particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less. This application was submitted to the TCEQ on February 10, 2014.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision to issue the permit because it meets all rules and regulations. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the TCEQ central office, the TCEQ Houston Regional Office, and at the Park Place Regional Library, 8145 Park Place, Houston, Harris County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk Street Suite H, Houston, Texas.

The Park Place Regional Library provides public access to the internet. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-95.255%2C29.722222&level=12>. For the exact location, refer to the application.

In addition to the above, Valero is making the permit application, executive director's preliminary decision, and draft permit available online at the following link: https://www.valero.com/en-us/Pages/EXCLIDX/HO-Air-Application.aspx. If you are otherwise unable to view the materials, please contact Michael Walter at (713) 921-6700.

DIRECT REFERRAL.

The Notice of Application and Preliminary Decision was published in English on September 10, 2018, and in Spanish on September 16, 2018. On June 12, 2020, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

CONTESTED CASE HEARING.

SOAH convened a contested case hearing and took jurisdiction over the application on August 27, 2020. Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a second preliminary hearing via Zoom videoconference on the date listed below. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - October 7, 2020

To join the Zoom meeting via computer:

www.zoom.us/join

Meeting ID: 161 673 7378

Password: *vLC1!

or

To join the Zoom meeting via telephone:

(346) 248-7799

Meeting ID: 161 673 7378

Password: 564860

or

To join the Zoom meeting via Smart Device:

Download the free app

Meeting ID: 161 673 7378

Password: *vLC1!

Additional details and methods for joining the Zoom meeting are available online at: https://www.tceq.texas.gov/assets/public/comm_exec/agendas/comm/backup/SOAH/Valero Refining-Texas, L.P./ValeroZoomInfo.pdf

Visit the SOAH website for registration at:

http://www.soah.texas.gov/

or call SOAH at (512) 475-4993.

The purpose of the second preliminary hearing is to name additional parties who could not participate on August 27, 2020, and establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

MAILING LIST. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at www.tceq.texas.gov

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at www.tceq.texas.gov.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Further information may also be obtained from Valero Refining-Texas, L.P. at the address stated above or by calling Mr. Mike Jasek, Manager Environmental Engineering at (713) 923-3361.

Issued: September 1, 2020

TRD-202003615
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 2, 2020

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Texas Ethics Commission

List of Late Filers

August 27, 2020

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: 30 Day Pre-Election Report due February 5, 2018

Thelma S. Clardy, 1801 N. Hampton Rd. Suite 365, De Soto, Texas 75115

Deadline: Semiannual Report due July 16, 2018

Thelma S. Clardy, 1801 N. Hampton Rd. Suite 365, De Soto, Texas 75115

Deadline: Semiannual Report due January 15, 2019

Mallory A. Olfers, 5534 Sunup Dr., San Antonio, Texas 78233-4488

Deadline: Semiannual Report due January 15, 2020

Clinton A. Bedsole, 8449 Plymouth Lane, Frisco, Texas 75034

Deadline: 30 Day Pre-Election Report due February 3, 2020

Angeanette Thibodeaux, 6713 Cathcart, Houston, Texas 77091

Deadline: 8 Day Pre-Election Report due February 24, 2020

Angeanette Thibodeaux, 6713 Cathcart, Houston, Texas 77091

TRD-202003585
Anne Peters
Executive Director
Texas Ethics Commission
Filed: August 31, 2020

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Texas Commission on Fire Protection

Correction of Error

The Texas Commission on Fire Protection (commission) published proposed amendments to Title 37, Chapter 459 and proposed new Title 37, Chapter 461 in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6059 and 45 TexReg 6060). Due to an error by the Texas Register, the commission's part number and name were left out of the publication. The commission's rules are found in Title 37, Part 13.

TRD-202003602

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for ProTucket Insurance Company, a foreign fire and/or casualty company. The home office is in Providence, Rhode Island.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202003621
James Person
General Counsel
Texas Department of Insurance
Filed: September 2, 2020

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Texas Lottery Commission

Scratch Ticket Game Number 2259 "7-11-21®"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2259 is "7-11-21®". The play style is "find symbol".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2259 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2259.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, 16, 18, 19, 20, 22, 7 SYMBOL, 11 SYMBOL, 21 SYMBOL, $1.00, $2.00, $3.00, $5.00, $9.00, $10.00, $15.00, $30.00, $90.00 and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2259 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
8	EGT
9	NIN
10	TEN
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
22	TWTO
7 SYMBOL	WIN$
11 SYMBOL	DBL
21 SYMBOL	TRP
$1.00	ONE$
$2.00	TWO$
$3.00	THR$
$5.00	FIV$
$9.00	NIN$
$10.00	TEN$
$15.00	FFN$
$30.00	TRTY$
$90.00	NITY$
$1,000	ONTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2259), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2259-0000001-001.

H. Pack - A Pack of the "7-11-21®" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last

page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "7-11-21®" Scratch Ticket Game No. 2259.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "7-11-21®" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose ten (10) Play Symbols. If a player reveals a "7" Play Symbol, the player wins the PRIZE for that symbol. If the player reveals an "11" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If the player reveals a "21" Play Symbol, the player wins TRIPLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly ten (10) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly ten (10) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the ten (10) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the ten (10) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. FIND SYMBOL: No prize amount in a non-winning spot will correspond with the Play Symbol (i.e., 1 and $1).

D. FIND SYMBOL: A non-winning Prize Symbol will never match a winning Prize Symbol.

E. FIND SYMBOL: No matching non-winning Prize Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

F. FIND SYMBOL: The "11" (DBL) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

G. FIND SYMBOL: The "21" (TRP) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

H. FIND SYMBOL: No matching non-winning Play Symbols on a Ticket.

I. FIND SYMBOL: The "7" (WIN$) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "7-11-21®" Scratch Ticket Game prize of $1.00, $2.00, $3.00, $5.00, $9.00, $15.00, $30.00 or $90.00, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00 or $90.00 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "7-11-21®" Scratch Ticket Game prize of $1,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "7-11-21®" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "7-11-21®" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "7-11-21®" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 10,080,000 Scratch Tickets in Scratch Ticket Game No. 2259. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2259 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	1,142,400	8.82
$2.00	403,200	25.00
$3.00	201,600	50.00
$5.00	134,400	75.00
$9.00	100,800	100.00
$15.00	67,200	150.00
$30.00	17,640	571.43
$90.00	4,200	2,400.00
$1,000	10	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2259 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2259, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202003610
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 1, 2020

♦ ♦ ♦

Scratch Ticket Game Number 2274 "500X LOTERIA SPECTACULAR"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2274 is "500X LOTERIA SPECTACULAR". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2274 shall be $50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2274.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: AIRPLANE SYMBOL, ARMORED CAR SYMBOL, ATM CARD SYMBOL, BANK SYMBOL, BIRD SYMBOL, COINS SYMBOL, FLAG SYMBOL, CROWN SYMBOL, RABBIT FOOT SYMBOL, GOLD BAR SYMBOL, HEART SYMBOL, KEY SYMBOL, LAMP SYMBOL, MOON SYMBOL, RAINBOW SYMBOL, RING SYMBOL, SEVEN SYMBOL, SPADE SYMBOL, SUN SYMBOL, WISHBONE SYMBOL, THE ARMADILLO SYMBOL, THE BAT SYMBOL, THE BICYCLE SYMBOL, THE BLUEBONNET SYMBOL, THE BOAR SYMBOL, THE BUTTERFLY SYMBOL, THE CACTUS SYMBOL, THE CARDINAL SYMBOL, THE CHERRIES SYMBOL, THE CHILE PEPPER SYMBOL, THE CORN SYMBOL, THE COVERED WAGON SYMBOL, THE COW SYMBOL, THE COWBOY SYMBOL, THE COWBOY HAT SYMBOL, THE DESERT SYMBOL, THE FIRE SYMBOL, THE FOOTBALL SYMBOL, THE GEM SYMBOL, THE GUITAR SYMBOL, THE HEN SYMBOL, THE HORSE SYMBOL, THE HORSESHOE SYMBOL, THE JACKRABBIT SYMBOL, THE LIZARD SYMBOL, THE LONESTAR SYMBOL, THE MARACAS SYMBOL, THE MOCKINGBIRD SYMBOL, THE MOONRISE SYMBOL, THE MORTAR PESTLE SYMBOL, THE NEWSPAPER SYMBOL, THE OIL RIG SYMBOL, THE PECAN TREE SYMBOL, THE PIÑATA SYMBOL, THE RACE CAR SYMBOL, THE RATTLESNAKE SYMBOL, THE ROAD RUNNER SYMBOL, THE SADDLE SYMBOL, THE SHIP SYMBOL, THE SHOES SYMBOL, THE SOCCER BALL

SYMBOL, THE SPEAR SYMBOL, THE SPUR SYMBOL, THE STRAWBERRY SYMBOL, THE SUNSET SYMBOL, THE WHEEL SYMBOL, THE WINDMILL SYMBOL, BAR SYMBOL, BELL SYMBOL, BILL SYMBOL, CAMERA SYMBOL, CANDY SYMBOL, CHERRY SYMBOL, CLOVER SYMBOL, DICE SYMBOL, DOLLAR SIGN SYMBOL, DRUM SYMBOL, GEM SYMBOL, GIFT SYMBOL, CHEST SYMBOL, MELON SYMBOL, NECKLACE SYMBOL, PEARL SYMBOL, SHELL SYMBOL, STAR SYMBOL, VAULT SYMBOL, WATER BOTTLE SYMBOL, $50.00, $75.00, $100, $150, $200, $250, $500, $1,000, $5,000, $25,000 and $3,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2274 - 1.2D

PLAY SYMBOL	CAPTION
AIRPLANE SYMBOL	AIRPLANE
ARMORED CAR SYMBOL	ARMCAR
ATM CARD SYMBOL	CARD
BANK SYMBOL	BANK
BIRD SYMBOL	BIRD
COINS SYMBOL	COINS
FLAG SYMBOL	FLAG
CROWN SYMBOL	CROWN
RABBIT FOOT SYMBOL	FOOT
GOLD BAR SYMBOL	GOLDBAR
HEART SYMBOL	HEART
KEY SYMBOL	KEY
LAMP SYMBOL	LAMP
MOON SYMBOL	MOON
RAINBOW SYMBOL	RAINBOW
RING SYMBOL	RING
SEVEN SYMBOL	SEVEN
SPADE SYMBOL	SPADE
SUN SYMBOL	SUN
WISHBONE SYMBOL	WISHBONE
THE ARMADILLO SYMBOL	THEARMADILLO
THE BAT SYMBOL	THE BAT
THE BICYCLE SYMBOL	THE BICYCLE
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE BOAR SYMBOL	THE BOAR
THE BUTTERFLY SYMBOL	THEBUTTERFLY
THE CACTUS SYMBOL	THE CACTUS
THE CARDINAL SYMBOL	THECARDINAL
THE CHERRIES SYMBOL	THECHERRIES
THE CHILE PEPPER SYMBOL	THECHILEPEPPER
THE CORN SYMBOL	THE CORN
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE COW SYMBOL	THE COW
THE COWBOY SYMBOL	THECOWBOY
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE DESERT SYMBOL	THE DESERT
THE FIRE SYMBOL	THE FIRE
THE FOOTBALL SYMBOL	THEFOOTBALL

THE GEM SYMBOL	THE GEM
THE GUITAR SYMBOL	THE GUITAR
THE HEN SYMBOL	THE HEN
THE HORSE SYMBOL	THE HORSE
THE HORSESHOE SYMBOL	THEHORSESHOE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE LIZARD SYMBOL	THELIZARD
THE LONESTAR SYMBOL	THELONESTAR
THE MARACAS SYMBOL	THEMARACAS
THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE MOONRISE SYMBOL	THEMOONRISE
THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE
THE NEWSPAPER SYMBOL	THENEWSPAPER
THE OIL RIG SYMBOL	THEOILRIG
THE PECAN TREE SYMBOL	THEPECANTREE
THE PIÑATA SYMBOL	THE PIÑATA
THE RACE CAR SYMBOL	THERACECAR
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE ROAD RUNNER SYMBOL	THEROADRUNNER
THE SADDLE SYMBOL	THESADDLE
THE SHIP SYMBOL	THE SHIP
THE SHOES SYMBOL	THE SHOES
THE SOCCER BALL SYMBOL	THESOCCERBALL
THE SPEAR SYMBOL	THE SPEAR
THE SPUR SYMBOL	THE SPUR
THE STRAWBERRY SYMBOL	THESTRAWBERRY
THE SUNSET SYMBOL	THE SUNSET
THE WHEEL SYMBOL	THE WHEEL
THE WINDMILL SYMBOL	THEWINDMILL
BAR SYMBOL	BAR
BELL SYMBOL	BELL
BILL SYMBOL	BILL
CAMERA SYMBOL	CAMERA
CANDY SYMBOL	CANDY
CHERRY SYMBOL	CHERRY
CLOVER SYMBOL	CLOVER
DICE SYMBOL	DICE
DOLLAR SIGN SYMBOL	DOLLAR
DRUM SYMBOL	DRUM
GEM SYMBOL	GEM
GIFT SYMBOL	GIFT

CHEST SYMBOL	CHEST
MELON SYMBOL	MELON
NECKLACE SYMBOL	NECKLACE
PEARL SYMBOL	PEARL
SHELL SYMBOL	SHELL
STAR SYMBOL	STAR
VAULT SYMBOL	VAULT
WATER BOTTLE SYMBOL	WATER
$50.00	FFTY$
$75.00	SVFV$
$100	ONHN
$150	ONFF
$200	TOHN
$250	TOFF
$500	FVHN
$1,000	ONTH
$5,000	FVTH
$25,000	25TH
$3,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2274), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2274-0000001-001.

H. Pack - A Pack of the "500X LOTERIA SPECTACULAR" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 020 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "500X LOTERIA SPECTACULAR" Scratch Ticket Game No. 2274.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "500X LOTERIA SPECTACULAR" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty-seven (87) Play Symbols. PLAY AREA 1 INSTRUCTIONS (BONUS): If the player reveals 2 matching symbols in the BONUS $50, the player wins $50. If the player reveals 2 matching symbols in the BONUS $100, the player wins $100. If the player reveals 2 matching symbols in the BONUS $200, the player wins $200. If the player reveals 2 matching symbols in the BONUS $500, the player wins $500. If the player reveals 2 matching symbols in the BONUS $1,000, the player wins $1,000. PLAY AREA 2 INSTRUCTIONS (PLAYBOARD): (1) The player completely scratches the CALLER'S CARD to reveal 27 symbols. (2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. (3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. PLAY AREA 3 INSTRUCTIONS (GAMES 1 - 8): The player scratches ONLY the symbols on GAMES 1 - 8 that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 2 symbols in the same GAME, the player wins the PRIZE for that GAME. PLAY AREA 4 INSTRUCTIONS (2X, 5X, 10X, 50X, 500X MULTIPLIER): The player scratches the 2X, 5X, 10X, 50X and 500X MULTIPLIER boxes to reveal 2 symbols in each box. If the player reveals 2 matching symbols in the same MULTIPLIER box, the player multiplies the total prize won on the ticket by that MULTIPLIER and wins that amount. For example, revealing 2 "STAR" Play Symbols in the 10X MULTIPLIER box will multiply the total prize won by 10 TIMES. INSTRUCCIONES PARA ÁREA DE JUEGO 1 (BONO): Si el jugador revela 2 símbolos iguales en el área de BONO $50, el jugador gana $50. Si el jugador revela 2 símbolos iguales en el área de BONO $100, el jugador gana $100. Si el jugador revela 2 símbolos iguales en el área de BONO $200, el jugador gana $200. Si el jugador revela 2 símbolos iguales en el área de BONO $500, el jugador gana $500. Si el jugador revela 2 símbolos iguales en el área de BONO $1,000, el

jugador gana $1,000. INSTRUCCIONES PARA ÁREA DE JUEGO 2 (TABLA DE JUEGO): (1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 27 símbolos. (2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. (3) Si el jugador revela una línea completa, horizontal, vertical o diagonal, el jugador gana el premio para esa línea. INSTRUCCIONES PARA ÁREA DE JUEGO 3 (JUEGOS 1 - 8): El jugador SOLAMENTE raspa los símbolos en los JUEGOS 1 - 8 que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 2 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. INSTRUCCIONES PARA ÁREA DE JUEGO 4 (MULTIPLICADOR 2X, 5X, 10X, 50X, 500X): El jugador raspa las cajas de MULTIPLICADOR 2X, 5X, 10X, 50X y 500X para revelar 2 símbolos en cada caja. Si el jugador revela 2 símbolos iguales en la misma caja de MULTIPLICADOR, el jugador multiplica el premio total ganado en el boleto por ese MULTIPLICADOR y gana esa cantidad. Por ejemplo, revelando 2 Símbolos de Juego de "ESTRELLA" en la caja MULTIPLICADOR 10X multiplicará por 10 el premio total ganado. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eighty-seven (87) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly eighty-seven (87) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eighty-seven (87) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-seven (87) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to sixteen (16) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. PLAY AREA 1 (BONUS)/ÁREA DE JUEGO 1 (BONO): There will never be matching Play Symbols in the BONUS/BONO play areas, unless used as a winning play.

D. PLAY AREA 2 (PLAYBOARD)/ÁREA DE JUEGO 2 (TABLA DE JUEGO): No matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

E. PLAY AREA 2 (PLAYBOARD)/ÁREA DE JUEGO 2 (TABLA DE JUEGO): At least eight (8) but no more than twelve (12) CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a Play Symbol on the PLAYBOARD/TABLA DE JUEGO play area.

F. PLAY AREA 2 (PLAYBOARD)/ÁREA DE JUEGO 2 (TABLA DE JUEGO): No matching Play Symbols are allowed on the same PLAYBOARD/TABLA DE JUEGO play area.

G. PLAY AREA 4 (2X, 5X, 10X, 50X, 500X MULTIPLIER)/ÁREA DE JUEGO 4 (MULTIPLICADOR 2X, 5X, 10X, 50X, 500X): There will never be matching Play Symbols in the MULTIPLIER/MULTIPLICADOR play areas, unless used as a winning play.

2.3 Procedure for Claiming Prizes.

A. To claim a "500X LOTERIA SPECTACULAR" Scratch Ticket Game prize of $50.00, $75.00, $100, $150, $200, $250, $300 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $75.00, $100, $150, $200, $250, $300 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "500X LOTERIA SPECTACULAR" Scratch Ticket Game prize of $1,000, $5,000, $10,000 or $25,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "500X LOTERIA SPECTACULAR" Scratch Ticket Game top level prize of $3,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers in Austin, Dallas, Fort Worth, Houston or San Antonio, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification and proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). The Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "500X LOTERIA SPECTACULAR" Scratch Ticket Game prize, including the top level prize of $3,000,000, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "500X LOTERIA SPECTACULAR" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "500X LOTERIA SPECTACULAR" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 5,040,000 Scratch Tickets in Scratch Ticket Game No. 2274. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2274 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$50.00	504,000	10.00
$75.00	315,000	16.00
$100	315,000	16.00
$150	201,600	25.00
$200	201,600	25.00
$250	38,724	130.15
$300	25,200	200.00
$500	25,200	200.00
$1,000	1,260	4,000.00
$5,000	336	15,000.00
$10,000	50	100,800.00
$25,000	16	315,000.00
$3,000,000	4	1,260,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.10. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2274 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2274, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202003611
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 1, 2020

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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