TEXAS REGISTER

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In This Issue

WITHDRAWN RULES

ADOPTED RULES

RULE REVIEW

TABLES AND GRAPHICS

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.

Appointments

Appointments for September 17, 2020

Appointed to the Task Force on Infectious Disease Preparedness and Response, for a term to expire at the pleasure of the Governor, Ogechika K. "Oge" Alozie, M.D. of El Paso, Texas (replacing Muriel A. Marshall, D.O., Dr.P.H. of McKinney).

Appointed to the Task Force on Infectious Disease Preparedness and Response, for a term to expire at the pleasure of the Governor, Sheila M. Haley, Ph.D. of Lantana, Texas (replacing Janet M. Glowicz of Denton).

Appointed to the Task Force on Infectious Disease Preparedness and Response, for a term to expire at the pleasure of the Governor, Ruth Ruggero Hughs of Austin, Texas (replacing Rolando Pablos of West Lake Hills).

Appointed to the Task Force on Infectious Disease Preparedness and Response, for a term to expire at the pleasure of the Governor, Harrison Keller of Austin, Texas (replacing Raymund A. Paredes, Ph.D. of Austin).

Appointed to the Task Force on Infectious Disease Preparedness and Response, for a term to expire at the pleasure of the Governor, Tracy R. Norris of Austin, Texas (replacing John F. Nichols of San Marcos).

Appointed to the Task Force on Infectious Disease Preparedness and Response, for a term to expire at the pleasure of the Governor, Patrick L. O'Daniel of Austin, Texas (replacing Jesse W. "Dale" Wainwright of Austin).

Appointed to the Task Force on Infectious Disease Preparedness and Response, for a term to expire at the pleasure of the Governor, Daniel J. Owens of Bryan, Texas (replacing Brett P. Giroir, M.D. of College Station).

Appointed to the Task Force on Infectious Disease Preparedness and Response, for a term to expire at the pleasure of the Governor, Nancy D. Tanner of Amarillo, Texas (replacing Edward M. "Ed" Emmett of Houston).

Appointed to the Task Force on Infectious Disease Preparedness and Response, for a term to expire at the pleasure of the Governor, Surendra Kumar Varma, M.D. of Lubbock, Texas (pursuant to Health & Safety Code Sec. 81.404).

Appointed to the Task Force on Infectious Disease Preparedness and Response, for a term to expire at the pleasure of the Governor, Bobby Wilkinson of Wimberley, Texas (replacing Timothy K. "Tim" Irvine of Austin).

Appointed to the Task Force on Infectious Disease Preparedness and Response, for a term to expire at the pleasure of the Governor, Cecile Erwin Young of Austin, Texas (replacing Charles R. Smith, Jr. of Austin).

Appointments for September 21, 2020

Appointed to the Family and Protective Services Council, for a term to expire February 1, 2025, Julie M. Krawczyk of Garland, Texas (replacing Aureka C. Simpson of DeSoto, whose term expired).

Appointed to the Appraisal Management Companies Advisory Committee, for a term to expire January 31, 2022, Julia A. Hayes of Beaumont, Texas (replacing Angélica M. "Angie" Guerra of Sugar Land, whose term expired).

Appointed to the Appraisal Management Companies Advisory Committee, for a term to expire January 31, 2022, David J. Mentesana of Dallas, Texas (Mr. Mentesana is being reappointed).

Greg Abbott, Governor

TRD-202003945

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Executive Order GA-30

Relating to the continued response to the COVID-19 disaster as Texas reopens.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

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

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating certain social-distancing restrictions for Texans in accordance with guidelines promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC); and

WHEREAS, I issued Executive Order GA-14 on March 31, 2020, expanding the social distancing restrictions for Texans based on guidance from health experts and the President; and

WHEREAS, I subsequently issued Executive Orders GA-16, GA-18, GA-21, GA-23, and GA-26 from April through early June 2020, aiming to achieve the least restrictive means of combatting the threat to public health by continuing certain social-distancing restrictions, while implementing a safe, strategic plan to reopen Texas; and

WHEREAS, as Texas reopens in the midst of COVID-19, increased spread is to be expected, and the key to controlling the spread and keeping Texas residents safe is for all Texans to consistently follow good hygiene and social-distancing practices, especially those set forth in the minimum standard health protocols from the Texas Department of State Health Services (DSHS); and

WHEREAS, in June 2020, Texas experienced substantial increases in COVID-19 cases and hospitalizations, necessitating targeted and temporary adjustments to the reopening plan to achieve the least restrictive means for reducing the growing spread of COVID-19 and the resulting imminent threat to public health, and to avoid a need for more extreme measures; and

WHEREAS, I therefore issued Executive Orders GA-28 and GA-29 in late June and early July 2020, respectively, and amended Executive Order GA-28 by proclamation on July 2, 2020; and

WHEREAS, due to improved medical treatments for COVID-19 patients, substantial increases in testing, abundant supplies of personal protective equipment, and Texans' adherence to safe practices like social distancing, hand sanitizing, and use of face coverings, the spread of COVID-19 and the number of new COVID-19 cases and hospitalizations have steadily and significantly declined since late July; and

WHEREAS, as Texas continues to reopen, everyone must act safely, and to that end, this executive order and prior executive orders provide that all persons should follow the health protocols from DSHS, which whenever achieved will mean compliance with the minimum standards for safely reopening, but which should not be used to fault those who act in good faith but can only substantially comply with the standards in light of scarce resources and other extenuating COVID-19 circumstances; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by a fine not to exceed $1,000, and may be subject to regulatory enforcement;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, and in accordance with guidance from the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, other medical advisors, the White House, and the CDC, do hereby order the following on a statewide basis effective at 12:01 a.m. on September 21, 2020:

Every business establishment in Texas shall operate at no more than 50 percent of the total listed occupancy of the establishment; *provided, however, that*:

1. There is no occupancy limit for the following:

a. any services listed by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) in its Guidance on the Essential Critical Infrastructure Workforce, Version 4.0 or any subsequent version;

b. religious services, including those conducted in churches, congregations, and houses of worship;

c. local government operations, including county and municipal governmental operations relating to licensing (including marriage licenses), permitting, recordation, and document-filing services, as determined by the local government;

d. child-care services;

e. youth camps, including but not limited to those defined as such under Chapter 141 of the Texas Health and Safety Code, and including all summer camps and other daytime and overnight camps for youths;

f. recreational sports programs for youths and adults;

g. any public or private schools, and any public or private institutions of higher education, not already covered above; and

h. drive-in concerts, movies, or similar events, under guidelines that facilitate appropriate social distancing, that generally require spectators to remain in their vehicles, and that minimize in-person contact between people who are not in the same household or vehicle.

2. The following types of business establishments may operate at up to 75 percent of the total listed occupancy of the establishment, except for those establishments in areas with high hospitalizations as defined below:

a. in-store, non-CISA retail establishments;

b. dine-in restaurants, as defined below in paragraph No. 7;

c. non-CISA office buildings;

d. non-CISA manufacturers;

e. museums and libraries; and

f. gyms and exercise facilities and classes.

"Areas with high hospitalizations" means any Trauma Service Area that has had seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of all hospitalized patients exceeds 15 percent, until such time as the Trauma Service Area has seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of all hospitalized patients is 15 percent or less. A current list of areas with high hospitalizations will be maintained at www.dshs.texas.gov/ga3031.

3. Except as provided below by paragraph No. 6, this 50 percent occupancy limit does not apply to outdoor areas, events, or establishments, except that the outdoor areas or outdoor venues identified in paragraph No. 2 of Executive Order GA-28 shall operate at no more than the percentage of normal operating limits as was set forth in Executive Order GA-28.

4. There is no occupancy limit for the following establishments that operate with at least six feet of social distancing between work stations:

a. cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade;

b. massage establishments and other facilities where licensed massage therapists or other persons licensed or otherwise authorized to practice under Chapter 455 of the Texas Occupations Code practice their trade; and

c. other personal-care and beauty services such as tanning salons, tattoo studios, piercing studios, hair removal services, and hair loss treatment and growth services.

5. Amusement parks shall operate at no more than 50 percent of the normal operating limits as determined by the owner.

6. For any outdoor gathering in excess of 10 people, other than those set forth above in paragraph Nos. 1, 2, 3, or 5, the gathering is prohibited unless the mayor of the city in which the gathering is held, or the county judge in the case of a gathering in an unincorporated area, approves of the gathering, and such approval can be made subject to certain conditions or restrictions not inconsistent with this executive order.

7. Only restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages, and whose customers eat or drink only while seated, may offer dine-in services.

8. People shall not visit bars or similar establishments that hold a permit from the Texas Alcoholic Beverage Commission (TABC) and are not restaurants as defined above in paragraph No. 7; provided, however, that the use by such bars or similar establishments of drive-thru, pickup, or delivery options for food and drinks is allowed to the extent authorized by TABC.

9. People shall not use commercial rafting or tubing services, including rental of rafts or tubes and transportation of people for the purpose of rafting or tubing.

10. For any business establishment that is subject to a 50 percent "total listed occupancy" limit or "normal operating limit," and that is in a county that has filed with DSHS, and is in compliance with, the requisite attestation form promulgated by DSHS regarding minimal cases of COVID-19, the business establishment may operate at up to 75 percent of the total listed occupancy or normal operating limit of the establishment.

11. For purposes of this executive order, facilities with retractable roofs are considered indoor facilities, whether the roof is opened or closed.

12. Staff members are not included in determining operating levels, except for manufacturing services and office workers.

13. Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at www .dshs.texas.gov/coronavirus, people shall not be in groups larger than 10 and shall maintain six feet of social distancing from those not in their group.

14. People over the age of 65 are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving the home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation.

15. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) should use good-faith efforts and available resources to follow the minimum standard health protocols recommended by DSHS.

16. Nothing in this executive order or the DSHS minimum standards precludes requiring a customer to follow additional hygiene measures when obtaining services.

17. People may visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible; and

18. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency (TEA). Private schools and institutions of higher education are encouraged to establish similar standards.

Notwithstanding anything herein to the contrary, the governor may by proclamation add to the list of establishments or venues that people shall not visit.

This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list or scope of services as set forth in this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

All existing state executive orders relating to COVID-19 are amended to eliminate confinement in jail as an available penalty for violating the executive orders. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes Executive Order GA-28, but does not supersede Executive Orders GA-10, GA-13, GA-17, GA-19, GA-24, GA-25, GA-27, or GA-29.

This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.

Given under my hand this the 17th day of September, 2020.

Greg Abbott, Governor

TRD-202003841

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Executive Order GA-31

Relating to hospital capacity during the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

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

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, a shortage of hospital capacity would hinder efforts to cope with the

COVID-19 disaster, and at various times during this disaster, hospital capacity was being overly diminished by surgeries and procedures that were not medically necessary to correct a serious medical condition or to preserve the life of a patient; and

WHEREAS, following previous executive orders that had enacted more stringent measures to avoid a shortage of hospital capacity or personal protective equipment, I issued Executive Order GA-19 on April 27, 2020; and

WHEREAS, among its provisions, Executive Order GA-19 required all hospitals licensed under Chapter 241 of the Texas Health and Safety Code to reserve at least 15 percent of their hospital capacity for treatment of COVID-19 patients, and continued the suspensions of various

hospital licensing requirements that would stand in the way of implementing increased occupancy in the event of surge needs for hospital capacity due to COVID-19; and

WHEREAS, in light of subsequent, elevated concerns about hospital capacity in certain parts of the state, I also issued Executive Order GA-27 on June 25, 2020, requiring the postponement of certain surgeries and procedures in Bexar, Dallas, Harris, and Travis counties; and

WHEREAS, by proclamations dated June 30 and July 9, 2020, I added to the list of counties covered by Executive Order GA-27, such that its prohibition has applied in all counties within Trauma Service Areas J, K, M, O, P, Q, R, S, T, U, and V; and

WHEREAS, though there are still concerns over hospital capacity in some parts of the state, government officials should look for the least restrictive means of coping with the COVID-19 disaster; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by a fine not to exceed $1,000, and may be subject to regulatory enforcement;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

Every hospital that is licensed under Chapter 241 of the Texas Health and Safety Code, and is also located in an area with high hospitalizations as defined below, shall postpone all surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician; provided, however, that this prohibition shall not apply to any surgery or procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete any hospital capacity needed to cope with the COVID-19 disaster.

"Areas with high hospitalizations" means any Trauma Service Area that has had seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of all hospitalized patients exceeds 15 percent, until such time as the Trauma Service Area has seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of all hospitalized patients is 15 percent or less. A current list of areas with high hospitalizations will be maintained at www.dshs.texas.gov/ga3031.

Furthermore, every hospital that is licensed under Chapter 241 of the Texas Health and Safety Code shall reserve at least 10 percent of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients, as determined by the Texas Health and Human Services Commission; provided, however, that any hospital that is part of a hospital system consisting of more than one member hospital may reserve less than 10 percent of its capacity so long as the cumulative capacity reserved throughout the hospital system within the same Trauma Service Area is at least 10 percent.

Pursuant to Section 418.016(a) of the Texas Government Code, I hereby continue the suspension of the following provisions to the extent necessary to implement increased occupancy in the event of surge needs for hospital capacity due to COVID-19:

25 TAC Sec. 133.162(d)(4)(A)(iii)(I);

25 TAC Sec. 133.163(f)(1)(A)(i)(II)-(III);

25 TAC Sec. 133.163(f)(1)(B)(i)(III)-(IV);

25 TAC Sec. 133.163(m)(1)(B)(ii);

25 TAC Sec. 133.163(t)(1)(B)(iii)-(iv);

25 TAC Sec. 133.163(t)(1)(C);

25 TAC Sec. 133.163(t)(5)(B)-(C); and

any other pertinent regulations or statutes, upon written approval of the Office of the Governor.

This executive order supersedes Executive Orders GA-19 and GA-27, but does not supersede Executive Orders GA-10, GA-13, GA-17, GA-24, GA-25, GA-29, or GA-30. This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 17th day of September, 2020.

Greg Abbott, Governor

TRD-202003844

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Proclamation 41-3767

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that Tropical Storm Beta poses a threat of imminent disaster, including widespread and severe property damage, injury, and loss of life due to widespread flooding, storm surge, and damaging winds, in Aransas, Bee, Bexar, Brazoria, Calhoun, Chambers, Fort Bend, Galveston, Hardin, Harris, Jackson, Jasper, Jefferson, Jim Wells, Kenedy, Kleberg, Liberty, Live Oak, Matagorda, Nueces, Orange, Refugio, Sabine, San Augustine, San Patricio, Shelby, Travis, Victoria, and Wharton counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

Pursuant to Section 418.017 of the code, 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 of the code, 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 protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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 21st day of September, 2020.

Greg Abbott, Governor

TRD-202003871

♦ ♦ ♦

Proclamation 41-3768

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 25, 2020, certifying that Hurricane Hanna posed a threat of imminent disaster, including property damage and loss of life, due to widespread flooding, storm surge, and hurricane force winds, in Aransas, Bee, Bexar, Brazoria, Brooks, Calhoun, Cameron, Dimmit, Duval, Fort Bend, Galveston, Goliad, Harris, Hidalgo, Jackson, Jim Hogg, Jim Wells, Kenedy, Kleberg, La Salle, Live Oak, Matagorda, McMullen, Nueces, Refugio, San Patricio, Starr, Victoria, Webb, Wharton, Willacy, and Zapata counties; and

WHEREAS, on August 24, 2020, I issued a proclamation renewing this disaster declaration for all counties listed above; and

WHEREAS, due to the widespread damage caused by Hurricane Hanna, a state of disaster continues to exist in those same counties;

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 the 32 counties listed above.

Pursuant to Section 418.017 of the code, 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 of the code, 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 protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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 22nd day of September, 2020.

Greg Abbott, Governor

TRD-202003909

♦ ♦ ♦

Proclamation 41-3769

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2020, certifying that Hurricane Marco and thenTropical Storm Laura posed a threat of imminent disaster, including widespread and severe property damage, injury, and loss of life due to widespread flooding, storm surge, and damaging winds, in Aransas, Bexar, Brazoria, Calhoun, Cameron, Chambers, Galveston, Hardin, Harris, Jackson, Jasper, Jefferson, Kenedy, Kleberg, Liberty, Matagorda, Newton, Nueces, Orange, Refugio, San Patricio, Victoria, and Willacy counties; and

WHEREAS, I subsequently amended the aforementioned declaration and declared a state of disaster due to the threat Hurricane Laura posed to the previously declared counties and these additional counties: Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Dallas, Ellis, Fort Bend, Franklin, Gregg, Grimes, Harrison, Houston, Leon, Madison, Marion, Montgomery, Morris, Nacogdoches, Panola, Polk, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Walker, Waller, Wharton, and Wood counties; and

WHEREAS, due to the widespread damage caused by Hurricane Laura, a state of disaster continues to exist in those same counties;

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 the 62 counties listed above.

Pursuant to Section 418.017 of the code, 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 of the code, 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 protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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 22nd day of September, 2020.

Greg Abbott, Governor

TRD-202003910

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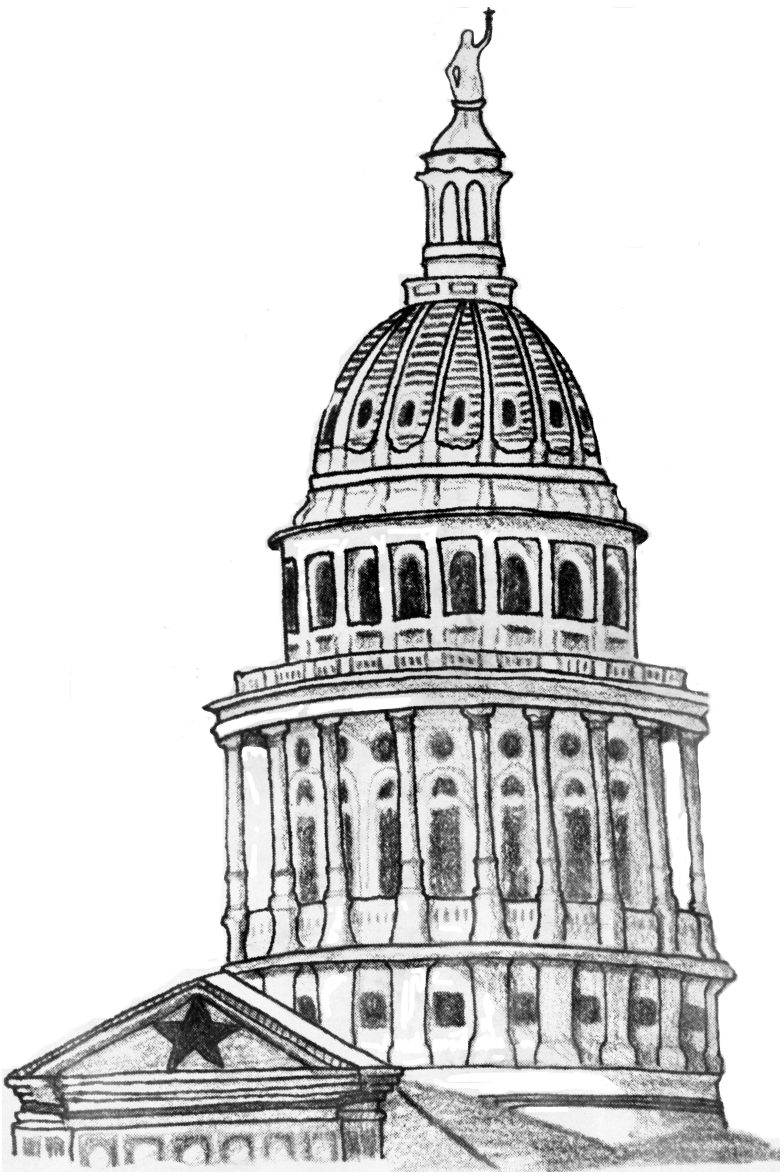

TEXAS ETHICS COMMISSION

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.

Ethics Advisory Opinion

EAO-557: 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).

SUMMARY

Because the Commission's rules exclude from the definition of "contribution" any "transfer for consideration of anything of value pursuant to a contract that reflects the usual and normal business practice of the vendor," (see 1 Texas Administrative Code §20.1(3)), an apparel company providing goods and services to candidates, political parties, and political committees before receiving payment from those purchasing the campaign apparel does not make a political contribution if the company offers the same terms "to political and non-political entities alike." *See* Tex. Ethics Comm'n Op. No. 533 (2015); Tex. Ethics Comm'n Op. No. 143 (1993).

However, the apparel company's customers *are* making political contributions when they purchase the campaign merchandise. Accordingly, any participating candidate, party, or committee would need the apparel company to keep a record of all reportable activity necessary for filing the required reports.

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.

Issued in Austin, Texas, on September 15, 2020.

TRD-202003901
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: September 22, 2020

♦ ♦ ♦

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING UNIVERSAL SCREENING FOR DYSLEXIA AND RELATED DISORDERS

19 TAC §74.1101

The Texas Education Agency (TEA) adopts on an emergency basis new §74.1101, concerning dyslexia screening. The new section implements the requirements of Governor Abbott's waiver of the Texas Education Code (TEC), §38.003(a), to screen each student in Kindergarten for dyslexia and related disorders at the end of the school year.

The new section is adopted on an emergency basis to take effect immediately. The TEA finds that an imminent peril to health, safety, and welfare exists due to the COVID-19 pandemic. As a consequence of the pandemic, the governor declared a state of disaster for Texas and ordered that schools be closed to in-classroom attendance for the remainder of the 2019-2020 school year. In recognition of this peril, the governor waived state law in TEC, §38.003(a), which requires the screening of students for dyslexia at the end of the school year. These screenings necessitate close proximity between students and teachers and would lead to unnecessary risk at a time when the state has taken extraordinary actions to reduce exposure to the virus and minimize its spread. The pandemic and its associated health risks require the adoption of the new section on fewer than 30 days' notice. The governor's waiver also recognizes the importance of interventions for students with dyslexia and requires TEA to adopt measures to ensure that school operations in the subsequent school year are implemented to ensure that the purposes of screening and treatment for dyslexia are accomplished, despite the delay in screening that may occur in the 2019-2020 school year. The emergency rule informs school districts and open-enrollment charter schools of their requirements should they utilize the governor's waiver of the end-of-year dyslexia screener required by TEC, §38.003(a), for Kindergarten students in the 2019-2020 school year. The emergency rule requires school districts and open-enrollment charter schools to provide a reading diagnostic at the beginning of the 2020-2021 school year, or at a time designated by the commissioner should circumstances make this infeasible, followed up with the screening requirement by the end of January 2021. These measures should allow the identification and interventions necessary to fulfill the purposes of the screening requirements and assist students at risk of dyslexia, despite the delay in screening from the 2019-2020 school year.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §38.003(c-1), which authorizes Texas Education Agency (TEA) to develop procedures to ensure the purposes of dyslexia screening are accomplished. In addition, Governor Abbott's May 21, 2020 waiver of TEC, §38.003(a), is conditional upon a school district or an open-enrollment charter school complying with procedures adopted by TEA to ensure the purposes of the screening are fulfilled despite the delay in screening.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §38.003(c-1), and Governor Abbott's May 21, 2020 waiver of TEC, §38.003(a).

§74.1101. Dyslexia Screening Requirements for 2019-2020 and 2020-2021 School Years.

(a) Conditional waiver for 2019-2020 school year. The requirement established under Texas Education Code (TEC), §38.003(a), to screen each student in Kindergarten for dyslexia and related disorders by the end of the school year was waived by the governor for the 2019-2020 school year due to school closures resulting from the COVID-19 pandemic, subject to guidance and rules adopted by Texas Education Agency.

(b) Applicability. The waiver described under subsection (a) of this section applies to school districts and open-enrollment charter schools that implement the requirements of subsection (c) of this section.

(c) Requirements for 2020-2021 school year. School districts and open-enrollment charter schools must administer the reading diagnostic instrument required by TEC, §28.006, within the first 20 school days of the 2020-2021 school year.

(1) A student should be provided reading intervention as needed based on the reading diagnostic instrument results.

(2) A student should be referred for an evaluation if dyslexia or a related disorder is suspected.

(3) A student should be referred for a full and individual initial evaluation as required by state and federal law if a need for special education services is suspected in addition to suspicion of the presence of dyslexia.

(4) Students in Grade 1 must be screened for dyslexia and related disorders by the end of January 2021 in accordance with TEC, §38.003(a), and the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders" adopted under §74.28 of this title (relating to Students with Dyslexia and Related Disorders).

(d) Alteration of timelines. The commissioner of education may alter the timelines under subsection (c) of this section for the state or an individual school district or open-enrollment charter school if circumstances resulting from the COVID-19 pandemic necessitate alteration.

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 23, 2020.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 135. AMBULATORY SURGICAL CENTERS

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §135.2, §135.26

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC or Commission) adopts on an emergency basis in Title 25 Texas Administrative Code (TAC), Chapter 135, Ambulatory Surgical Centers, amendments to §135.2, Definitions, and §135.26, Reporting Requirements, to expand treatment capabilities and modify current reporting requirements for ambulatory surgical centers (ASCs) to mitigate issues caused by patient surge due to COVID-19. As authorized by Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of these emergency amendments to §135.2, Definitions, and §135.26, Reporting Requirements, in TAC, Title 25, Chapter 135, Ambulatory Surgical Centers.

To protect current and future patients in health care facilities and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency rule amendments to allow a currently licensed ASC to: (1) expand their treatment options to include other health care services, not surgical services alone; (2) allow for patient stays longer than 23 hours; (3) remove current reporting requirements for longer patient stays and hospital transfers. The emergency amendments also require an ASC to report additional information to the Department of State Health Services if that agency requires it.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §243.010. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code, §243.010 requires the Commission to adopt rules containing minimum standards applicable to ASCs.

The rules implement Government Code §531.0055 and Health and Safety Code §243.010.

§135.2. Definitions.

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

(1) Act--Texas Ambulatory Surgical Center Licensing Act, Health and Safety Code, Chapter 243.

(2) Action plan--A written document that includes specific measures to correct identified problems or areas of concern; identifies strategies for implementing system improvements; and includes outcome measures to indicate the effectiveness of system improvements in reducing, controlling or eliminating identified problem areas.

(3) Administrator--A person who is a physician, is a registered nurse, has a baccalaureate or postgraduate degree in administration or a health-related field, or has one year of administrative experience in a health care setting.

(4) Advanced practice registered nurse (APRN)--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse in Texas. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner."

(5) Ambulatory Surgical Center (ASC)--A facility that primarily provides surgical services but may provide other health care services to patients [~~who do not require overnight hospitalization or extensive recovery, convalescent time or observation. The planned total length of stay for an ASC patient shall not exceed 23 hours. Patient stays of greater than 23 hours shall be the result of an unanticipated medical condition and shall occur infrequently. The 23-hour period begins with the induction of anesthesia~~].

(6) Autologous blood units--Units of blood or blood products derived from the recipient.

(7) Available--Able to be physically present in the facility to assume responsibility for the delivery of patient care services within five minutes.

(8) Certified registered nurse anesthetist (CRNA)--A registered nurse who has current certification from the Council on Certification of Nurse Anesthetists and who is currently authorized to practice as an advanced practice registered nurse by the Texas Board of Nursing.

(9) Change of ownership--

(A) a sole proprietor who transfers all or part of the ASC's ownership to another person or persons;

(B) the removal, addition, or substitution of a person or persons as a general, managing, or controlling partner in an ASC owned by a partnership and the tax identification number of that ownership changes; or

(C) a corporation that transfers all or part of the corporate stock which represents the ASC's ownership to another person or persons and the tax identification number of that ownership changes.

(10) Dentist--A person who is currently licensed under the laws of this state to practice dentistry.

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

(12) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharge into any waters, including ground waters.

(13) Extended observation--The period of time that a patient remains in the facility following recovery from anesthesia and discharge from the postanesthesia care unit, during which additional comfort measures or observation may be provided.

(14) Health care practitioners (qualified medical personnel)--Individuals currently licensed under the laws of this state who are authorized to provide services in an ASC.

(15) Licensed vocational nurse (LVN)--A person who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(16) Medicare-approved reference laboratory--A facility that has been certified and found eligible for Medicare reimbursement, and includes hospital laboratories which may be Joint Commission or American Osteopathic Association accredited or nonaccredited Medicare approved hospitals, and Medicare certified independent laboratories.

(17) Person--Any individual, firm, partnership, corporation, or association.

(18) Physician--An individual licensed by the Texas Medical Board and authorized to practice medicine in the State of Texas.

(19) Premises--A building where patients receive outpatient surgical services.

(20) Registered nurse (RN)--A person who is currently licensed by the Texas Board of Nursing as a registered nurse.

(21) Surgical technologist--A person who practices surgical technology as defined in Health and Safety Code, Chapter 259.

(22) Title XVIII--Title XVIII of the United States Social Security Act, 42 United States Code (USC), §§1395 et seq.

§135.26. Reporting Requirements.

(a) The ambulatory surgical center (ASC) shall make a report of the following incidents to the Health and Human Services Commission (HHSC) Complaint and Incident Intake unit. An online report prescribed by HHSC or a [~~department. A~~] written letter of explanation with supporting documents shall be submitted [~~mailed~~] to HHSC [~~the department~~] within 10 business days of the incident. [~~The mailing address is Department of State Health Services, Facility Licensing Group, Post Office Box 149347, Austin, Texas 78714-9347.~~]

(1) The death of a patient while under the care of the ASC; and

[~~(2) The transfer of a patient to a hospital;~~]

(2) [~~(3)~~] Patient development of complications within 24 hours of discharge from the ASC resulting in admission to a hospital. [~~; and~~]

[~~(4) A patient stay exceeding 23 hours.~~]

(b) On an annual basis, the ASC shall report the types and numbers of procedures performed and the average length of stay during the previous 12-month period. The report shall be made using a form to be prescribed by HHSC [~~the department~~].

(c) Any theft of drugs and/or diversion of controlled drugs shall be reported to the local police agency, the Texas State Board of Pharmacy, the Texas Department of Public Safety, and/or the Drug Enforcement Administration, and the Department of State Health Services.

(d) An ASC that performs abortions shall comply with the reporting requirements specified in the Texas Health and Safety Code, Chapters 171 and 245, and Chapter 139 of this title.

(e) The ASC shall submit reports to the department in accordance with the reporting requirements in Texas Health and Safety Code, §98.103 and §98.1045 (relating to Reportable Infections and Reporting of Preventable Adverse Events).

(f) Occurrences of fire in the ASC shall be reported as specified under §135.41(a)(2) of this title (relating to Fire Prevention and Protection) and §135.43(b)(6) of this title (relating to Handling and Storage of Gases, Anesthetics, and Flammable Liquids).

(g) An ASC that donates human fetal tissue under Texas Health and Safety Code, Chapter 173, shall submit an annual report to the Health and Human Services Commission that includes for each donation the specific type of fetal tissue donated and the accredited public or private institution of higher learning that received the donation. The ASC shall submit the annual report no later than January 31st of the subsequent year.

(h) An ASC shall submit to the Department of State Health Services (DSHS) any information required by DSHS, in the manner prescribed by DSHS.

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.

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 339. EMERGENCY RULE RELATED TO A STATE FACILITY, LOCAL INTELLECTUAL AND DEVELOPMENTAL DISABILITY AUTHORITY, LOCAL MENTAL HEALTH AUTHORITY, AND LOCAL BEHAVIORAL HEALTH AUTHORITY

SUBCHAPTER A. COVID-19 EMERGENCY RULE

26 TAC §339.101

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code (TAC), new Chapter 339, Subchapter A, §339.101, concerning an emergency rule in response to COVID-19 in order to ensure essential services are provided to individuals with intellectual and developmental disabilities (IDD). As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020 proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule regarding Temporary Changes to Requirements.

To protect individuals with IDD and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting a new emergency rule to temporarily change requirements in the following rules: 40 TAC §2.46(e)(3), 40 TAC §2.105(f)(1), 40 TAC §2.109(e)(3), 40 TAC §2.274(a)(2)(B), 40 TAC §2.556(d)(1), 40 TAC §4.156(a), 40 TAC §4.156(e), 40 TAC §9.158(f), 40 TAC §9.161(i)(1) and (2), 40 TAC §9.161(i)(1)(A), 40 TAC §9.582(c), §303.201, §303.204, §303.302, §303.302(a)(2)(A)(ii), §303.102(46) and (54), and §303.601(b)(7).

The rule allows individuals additional time to request certain reviews conducted by a local intellectual and developmental disability authority (LIDDA) and administrative hearings conducted by HHSC, and to take action to comply with certain accountability requirements. The rule also allows a LIDDA or state facility more time to submit to HHSC an individual's request for an administrative hearing. The rule allows a meeting between a service coordinator and an individual to be conducted by telephone or videoconferencing, rather than face-to-face, and allows a visit to community living options to be conducted virtually rather than in-person. The rule changes the requirement that a LIDDA withdraw an offer of Home and Community-based Services Program services for certain reasons to a requirement that the LIDDA not withdraw an offer, or obtain HHSC's approval before withdrawing an offer. The rule allows additional time for a LIDDA to complete certain activities after the LIDDA is notified of changes to an individual's level of need (LON) and additional time to notify HHSC if the LIDDA is unable to complete the activities. The rule allows a LIDDA to assess an individual by telecommunication after the LIDDA is notified by HHSC of changes to an individual's LON. The rule also allows a LIDDA more time to submit a plan of correction to HHSC after a review exit conference. The rule permits HHSC to implement the waivers the Centers for Medicare and Medicaid Services granted to Texas under Section 1135 of the Social Security Act concerning the preadmission screening and resident review (PASRR) process. The rule requires a nursing facility to submit each new admission as an exempted hospital discharge, which gives the LIDDA, local mental health authority (LMHA), or local behavioral health authority (LBHA) additional time to do a PASRR evaluation (PE), if one is required. The rule also permits a LIDDA, LMHA, or LBHA to conduct PEs and resident reviews and a habilitation coordinator to provide habilitation coordination by telephone or videoconferencing, rather than face-to-face.

STATUTORY AUTHORTY

The emergency rule is adopted under Texas Government Code §2001.034; §531.0055; and §531.021 and under Texas Human Resources Code §32.021. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Government Code §531.021 gives HHSC 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 Human Resources Code §32.021 requires the Executive Commissioner of HHSC to adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new rule implements Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

§339.101. Temporary Changes to Requirements.

The following temporary changes are made to the rules identified in paragraphs (1) - (14) of this section, which relate to functions of a state facility, local intellectual and developmental disability authority (LIDDA), local mental health authority (LMHA), and local behavioral health authority (LBHA). After the emergency rule is withdrawn or expired, HHSC will exercise its enforcement discretion to apply the

extended timelines established in this emergency rule to those actions that were initiated while the emergency rule was in effect.

(1) The 30-day period described in 40 TAC §2.46(e)(3) (relating to Notification and Appeals Process) is extended to 120 days. Therefore, the written notification given to a person and legally authorized representative (LAR) by a LIDDA or LIDDA's contractor must explain that the person or LAR may contact the LIDDA or the LIDDA's contractor within 120 days of the written notification to request a review of a decision to deny or terminate services.

(2) The 30-day period described in 40 TAC §2.105(f)(1) (relating to Accountability) is extended to 120 days. Therefore, if a person or the person's parent complies with the applicable accountability requirement within 120 days, a LIDDA must adjust the person's account to reflect retroactive compliance.

(3) The 10-working-day period described in 40 TAC §2.109(e)(3) (relating to Payments, Collections, and Non-payment) is extended to 90 calendar days. Therefore, a person or parent must submit a request to review a LIDDA's appeal decision to HHSC within 90 calendar days after the person or parent receives the appeal decision. In accordance with 40 TAC §2.109(e)(2), the LIDDA's notification of the appeal decision must describe this timeframe.

(4) Beginning March 13, 2020, a LIDDA may provide the visit to community living options described in 40 TAC §2.274(a)(2)(B) (relating to Consideration of Living Options for Individuals Residing in State MR Facilities) virtually, including by using panoramic images or a video of the living option, instead of in person. If a virtual visit is not available, the LIDDA must document that a virtual visit is not available and provide an in-person or virtual visit as soon as possible.

(5) Beginning March 13, 2020, the meeting described in 40 TAC §2.556(d)(1) (relating to LIDDA's Responsibilities) between a service coordinator and an individual may be conducted by telephone or videoconferencing, rather than face-to-face.

(6) The 30-day period described in 40 TAC §4.156(a) (relating to Request for an Administrative Hearing) is extended to 120 days. Therefore, if a person receives a notice described in 40 TAC §4.155(a) (relating to Notice), the person must submit a request for hearing so that it is received by HHSC within 120 days of the notice.

(7) The one-working-day period described in 40 TAC §4.156(e) is extended to 10 working days. Therefore, a state facility or LIDDA must submit a request for administrative hearing made in accordance with 40 TAC §4.156(a) within 10 working days after it receives the request.

(8) Beginning March 13, 2020, the requirement in 40 TAC §9.158(f) (relating to Process for Enrollment of Applicants) for a LIDDA to withdraw an offer of HCS Program services for a reason described in paragraphs (1) - (4) of this subsection is changed to a requirement for a LIDDA to:

(A) not withdraw an offer; or

(B) obtain approval from HHSC to withdraw an offer for a reason described in paragraphs (1) - (4) of this subsection.

(9) The 30-business-day period described in 40 TAC §9.161(i)(1) and (2) (relating to LOC Determination) is extended to 90 calendar days. Therefore, a LIDDA must complete the activities described in 40 TAC §9.161(i)(1)(A) - (C) within 90 calendar days after receiving notification from HHSC that an individual's level of need (LON) changes to a LON 1. If a LIDDA is unable to complete the activities described in 40 TAC §9.161(i)(1)(A) - (C) within 90 calendar days after receiving notification from HHSC, the LIDDA must notify HHSC of the reasons for the delay.

(10) The requirement in 40 TAC §9.161(i)(1)(A) that a LIDDA assess an individual in-person after receiving notification from HHSC that an individual's LON changes to a LON 1 is changed to allow a LIDDA to assess an individual by telecommunication after receiving notification from HHSC that an individual's LON changes to a LON 1.

(11) The 30-calendar-day period described in 40 TAC §9.582(c) (relating to Compliance with TxHmL Program Principles for LIDDAs) is extended to 90 calendar days. Therefore, if an item of non-compliance from a review of a LIDDA remains uncorrected at the time of the review exit conference, the LIDDA must submit a plan of correction to HHSC within 90 calendar days after the review exit conference.

(12) Beginning March 30, 2020, the requirements in §§303.201, 303.204, and 303.302 of this title (relating to Preadmission Process; Resident Review Process; and LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process, respectively) regarding the preadmission screening and resident review (PASRR) screening process, PASRR level II evaluations (PEs), and resident reviews are revised as follows:

(A) A Medicaid-certified nursing facility must submit every new admission as an exempted hospital discharge, including those that it would typically submit as a preadmission or expedited admission.

(B) Until resources become available, a LIDDA, LMHA, and LBHA may disregard the automated notification in the long-term care online portal that a resident review must be completed when the resident's stay has exceeded 30 days.

(13) Beginning March 13, 2020, a LIDDA, LMHA, or LBHA may conduct the PEs and resident reviews described in §303.302(a)(2)(A)(ii) of this title and §303.102(46) and (54) of this title (relating to Definitions) by telephone or videoconferencing, rather than face-to-face.

(14) Beginning March 13, 2020, the assigned habilitation coordinator may provide habilitation coordination as required in §303.601(b)(7) of this title (relating to Habilitation Coordination for a Designated Resident) by telephone or videoconferencing, rather than face-to-face.

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.

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CHAPTER 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING

SUBCHAPTER A. HOSPITALS

26 TAC §500.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis new §500.1, Hospital Off-Site Facilities in Response to COVID-19, in Title 26, Texas Administrative Code, Chapter 500, concerning an emergency rule to allow hospitals to treat and house patients more effectively in response to COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for Hospital Off-Site Facilities in Response to COVID-19.

To protect current and future patients in health care facilities and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to allow a currently licensed hospital to operate an off-site inpatient facility without obtaining a new license at: (1) another type of facility currently licensed or licensed within the past 36 months or a facility pending licensure that has passed its final architectural review inspection, such as an ambulatory surgical center, an assisted living facility, a freestanding emergency medical care facility, an inpatient hospice unit, a mental hospital, or a nursing facility; (2) an outpatient facility operated by the hospital; (3) a formerly licensed hospital that closed within the past 36 months or a hospital pending licensure that has passed its final architectural review inspection; (4) a hospital exempt from licensure; and (5) a mobile, transportable, or relocatable unit.

STATUTORY AUTHORITY

The emergency rule is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §241.026. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code, §241.026 requires the Commission to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §241.026.

§500.1. Hospital Off-Site Facilities in Response to COVID-19.

(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to §418.014 of the Texas Government Code.

(b) A hospital licensed under Health and Safety Code Chapter 241 that meets the requirements of this emergency rule may use an off-site facility for inpatient care under its existing license for the duration this emergency rule is in effect or any extension of this emergency rule is in effect.

(c) The off-site facility must be:

(1) an inpatient hospice unit licensed under Health and Safety Code Chapter 142 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(2) a hospital no longer licensed under Health and Safety Code Chapter 241 that closed within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(3) a hospital exempt from licensure under Health and Safety Code Chapter 241;

(4) a mobile, transportable, or relocatable unit, as defined in Title 25 Texas Administrative Code (TAC) §133.166 (relating to Mobile, Transportable, and Relocatable Units), that otherwise complies with that section;

(5) a nursing facility or other institution licensed under Health and Safety Code Chapter 242 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(6) an ambulatory surgical center licensed under Health and Safety Code Chapter 243 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(7) an assisted living facility licensed under Health and Safety Code Chapter 247 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(8) a freestanding emergency medical care facility licensed under Health and Safety Code Chapter 254 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(9) a mental hospital licensed under Health and Safety Code Chapter 577 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection; or

(10) an outpatient facility operated by the hospital, either currently or within the past 36 months.

(d) The hospital must submit an application to use an off-site facility for inpatient care to HHSC via email at infohflc@hhs.texas.gov and receive written approval from HHSC prior to using an off-site facility for inpatient care.

(e) HHSC has the discretion to approve or deny any application to use an off-site facility for inpatient care. HHSC may require an inspection or additional documentation of the off-site facility prior to considering an application.

(f) In order to protect the health, safety, and welfare of patients and the public, HHSC may withdraw its approval for a hospital to use the off-site facility for inpatient care at any time. Any patients being treated in the off-site facility at the time approval is withdrawn shall be safely relocated as soon as practicable according to the hospital's policies and procedures.

(g) The requirements of 25 TAC §133.21(c)(4)(B) - (C) (relating to the Scope of Hospital License) do not apply to an off-site facility applied for or used under this section.

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 18, 2020.

TRD-202003866
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: September 21, 2020
Expiration date: January 18, 2021
For further information, please call: (512) 834-4591

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CHAPTER 551. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §551.47

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions, Subchapter C, Standards for Licensure, new §551.47, an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in a facility. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. This emergency rulemaking reflects the continued reopening of the State of Texas. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for Intermediate Care Facility COVID-19 Response - Expansion of Reopening Visitation.

To protect intermediate care facility individuals and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to allow limited indoor and outdoor visitation in an intermediate care facility. The purpose of the new rule is to describe the requirements related to such visits.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code, §§2001.034 and 531.0055, and Texas Health and Safety Code §§252.031, 252.032, 252.033 and 252.043. Texas Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code, §531.0055, authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §§252.031, 252.032, and 252.033 require the Executive Commissioner of HHSC to establish rules prescribing the minimum standards and process for licensure as an intermediate care facility. Texas Health and Safety Code §252.043 establishes HHSC's authority to conduct an inspection, survey or investigation at an intermediate care facility to determine if the intermediate care facility is in compliance with the minimum acceptable levels of care for individuals who are living in an intermediate care facility, and the minimum acceptable life safety code and physical environment requirements.

The new section implements Texas Government Code §531.0055 and §531.021, and Chapter 252 of the Texas Health and Safety Code Chapter 252.

§551.47. Intermediate Care Facility COVID-19 Response--Expansion of Reopening Visitation.

(a) The following words and terms, when used in this subchapter, have the following meanings.

(1) Closed window visit--A personal visit between a visitor and an individual during which the individual and visitor are separated by a closed window and the visitor does not enter the building. A closed window visit is permitted at all facilities for all individuals.

(2) COVID-19 negative--A person who has tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(3) COVID-19 positive--The status of a person who has tested positive for COVID-19 and does not yet meet Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(4) End-of-life visit--A personal visit between a visitor and an individual who is actively dying. An end-of-life visit is permitted in all facilities for all individuals at the end of life.

(5) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, private personal caregiver or court appointed guardian, who is at least 18 years old, and has been designated by the individual or legal representative to provide regular care and support to an individual.

(6) Essential caregiver visit-- A personal visit between an individual and a designated essential caregiver as described in subsection (e) of this section. An essential caregiver visit is permitted in all facilities for COVID-19 negative and unknown COVID-19 status individuals.

(7) Facility-acquired COVID-19 infection--COVID-19 infection that is acquired after admission in an intermediate care facility and was not present at the end of the 14-day quarantine period following admission or readmission.

(8) Individual--A person enrolled in the intermediate care facilities for individuals with an intellectual disability or related conditions program.

(9) Large intermediate care facility--An intermediate care facility serving 17 or more individuals in one or more buildings.

(10) Open window visit--A personal visit between a visitor and an individual during which the individual and personal visitor are separated by an open window.

(11) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either an individual or paid or unpaid staff.

(12) Outdoor visit--A personal visit between an individual and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(13) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, and family members or friends of individuals at the end of life and two designated essential caregivers as described in subsection (e) of this section.

(14) Persons with legal authority to enter--Law enforcement officers, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

(15) Plexiglass indoor visit--A personal visit between an individual and one or more personal visitors, during which the individual and the visitor are both inside the facility but within a booth separated by a plexiglass barrier and the individual remains on one side of the barrier and the visitor remains on the opposite side of the barrier.

(16) Providers of essential services--Contract doctors, contract nurses, hospice workers, and individuals operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority (LMHA) whose services are necessary to ensure individual health and safety.

(17) Salon services visit--A personal visit between an individual and a salon services visitor as described in subsection (o) of this section. A salon services visit is permitted in all facilities for COVID-19 negative individuals.

(18) Salon services visitor--A barber, beautician or cosmetologist providing hair care or personal grooming services to an individual.

(19) Small intermediate care facility--An intermediate care facility serving 16 or fewer individuals.

(20) Unknown COVID-19 status--The status of a person who is a new admission or readmission, has spent one or more nights away from the facility, has had known exposure or close contact with a person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

(21) Vehicle parade--A personal visit between an individual and one or more personal visitors, during which the individual remains outdoors on the intermediate care facility campus, and a visitor drives past in a vehicle.

(b) An intermediate care facility must screen all visitors outside of the intermediate care facility prior to allowing them to enter, except emergency services personnel entering the facility or facility campus in an emergency, and personal visitors participating in a vehicle parade or a closed window visit. Visitor screenings must be documented in a log kept at the entrance to the facility, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(c) Visitors who meet any of the following screening criteria must leave the intermediate care facility campus and reschedule the visit:

(1) fever defined as a temperature of 100.4 Fahrenheit and above;

(2) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(3) any other signs and symptoms as outlined by the Centers for Disease Control and Prevention (CDC) in Symptoms of Coronavirus at cdc.gov;

(4) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, unless the visitor is seeking entry to provide critical assistance; or

(5) has a positive COVID-19 test result from a test performed in the last 10 days.

(d) An intermediate care facility may allow persons providing critical assistance, including essential caregivers, to enter the intermediate care facility if they pass the screening in subsection (c) of this section, except as provided in subsection (e)(8)(H) and (e)(9)(F) of this section. An intermediate care facility shall not prohibit entry of persons with legal authority to enter performing their official duties, unless they do not pass the screening in subsection (c) of this section.

(e) The following requirements apply to essential caregiver visits:

(1) Only one essential caregiver at a time may visit an individual.

(2) Each visit is limited to one essential caregiver at a time.

(3) Each visit is limited to two hours, unless the intermediate care facility determines that it can only accommodate a visit for a shorter duration or that it can accommodate a longer duration and adjusts the duration of the visit accordingly.

(4) The visit may occur outdoors, in the individual's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other individuals.

(5) Essential caregiver visitors do not have to maintain physical distancing between themselves and the individual they are visiting but, must maintain physical distancing between themselves and all other individuals and staff.

(6) The individual must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(7) The intermediate care facility must develop and enforce essential caregiver visitation policies and procedures, which include:

(A) a testing strategy for designated essential caregivers;

(B) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each designated essential caregiver on proper personal protective equipment (PPE) usage and infection control measures, hand hygiene and cough and sneeze etiquette;

(D) the essential caregiver must wear a facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the intermediate care facility;

(E) expectations regarding using only designated entrances and exits as directed;

(F) limiting visitation to the area designated by the facility in accordance with paragraph (4) of this subsection;

(G) facility staff must escort the essential caregiver from the facility entrance to the designated visitation area at the start of each visit; and

(H) facility staff must escort the essential caregiver from the designated visitation area to the facility exit at the end of each visit.

(8) The intermediate care facility must:

(A) inform the essential caregiver visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy, or provide an approved facemask and other appropriate PPE;

(C) maintain documentation of the essential caregiver visitor's agreement to follow the applicable policies, procedures and requirements;

(D) maintain documentation of the essential caregiver visitor's training as required in paragraph (7)(C) of this subsection;

(E) maintain documentation of the date of last COVID-19 test as reported by the essential caregiver;

(F) document the identity of each essential caregiver in the individual's records and verify the identity of the essential caregiver by creating an essential caregiver visitor badge;

(G) maintain a record of each essential caregiver visit, including:

(i) the date and time of the arrival and departure of the essential caregiver visitor;

(ii) the name of the essential caregiver visitor;

(iii) the name of the individual being visited; and

(iv) attestation that the identity of the essential caregiver visitor was confirmed, and

(H) prevent visitation by the essential caregiver if the individual has an active COVID-19 infection.

(9) The essential caregiver must:

(A) wear a facemask over both the mouth and nose and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the intermediate care facility;

(B) have a negative COVID-19 test result from a test performed no more than 14 days before the first essential caregiver visit, unless the intermediate care facility chooses to perform a rapid test prior to entry in the intermediate care facility;

(C) sign an agreement to leave the facility at the appointed time unless otherwise approved by the facility;

(D) self-monitor for signs and symptoms of COVID-19;

(E) not participate in visits if the designated essential caregiver has signs and symptoms of COVID-19, active COVID-19 infection, or other communicable diseases; and

(F) not participate in visits if the individual has an active COVID-19 infection.

(10) The facility may cancel the essential caregiver visit if the essential caregiver fails to comply with the facility's policy regarding essential caregiver visits or applicable requirements in this section.

(f) An intermediate care facility approved by the Texas Health and Human Services Commission (HHSC) may allow limited personal visitation as permitted by this section upon receiving an approved visitation designation. Approved visitation designation for a facility is not required for a closed window visit, end-of-life visit, or visits by persons providing critical assistance including essential caregivers as defined in subsection (a)(1) and (a)(4)-(5) of this section. If an intermediate care facility fails to comply with the requirements of this section, HHSC may rescind the visitation designation and may impose licensure remedies in accordance with Subchapter H of this chapter (relating to Enforcement).

(g) To request a facility visitation designation, an intermediate care facility must submit a completed Long-term Care Regulation (LTCR) form 2194, COVID-19 Status Attestation Form, including a facility map indicating which areas, units, wings, halls, or buildings accommodate COVID-19 negative, COVID-19 positive, and unknown COVID-19 status individuals, to the Regional Director in the LTCR Region where the facility is located. A facility with previous approval for visitation designation does not have to submit Form 2194 and a facility map, unless the previous visitation approval has been withdrawn, rescinded, or cancelled.

(h) To receive a facility visitation designation, an intermediate care facility must demonstrate:

(1) there are separate areas, units, wings, halls, or buildings designated for COVID-19 positive, COVID-19 negative or unknown COVID-19 status individual cohorts;

(2) separate dedicated staff are working exclusively in the separate areas, units, wings, halls, or buildings for individuals who are COVID-19 positive, COVID-19 negative or unknown COVID-19 status;

(3) there have been no confirmed COVID-19 cases for at least 14 consecutive days in staff working in the area, unit, wing, hall, or building which accommodates individuals who are COVID-19 negative;

(4) there have been no facility-acquired COVID-19 confirmed cases for at least 14 consecutive days in individuals in the COVID-19 negative area, unit, wing, hall, or building;

(5) staff are designated to work with only one individual cohort and the designation does not change from one day to another; and

(6) if an intermediate care facility has had previous cases of COVID-19 in staff or individuals in the area, unit, wing, hall, or building which accommodates individuals who are COVID-19 nega-

tive, HHSC LTCR has conducted a verification survey and confirmed the following:

(A) all staff and individuals in the COVID-19 negative area, unit, wing, hall, or building have fully recovered;

(B) the intermediate care facility has adequate staffing to continue care for all individuals and supervise visits permitted by this section; and

(C) the intermediate care facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(i) A small intermediate care facility that cannot provide separate areas, units, wings, halls, or buildings for individuals who are COVID-19 positive, COVID-19 negative or unknown COVID-19 status must demonstrate:

(1) there have been no confirmed COVID-19 cases for at least 14 consecutive days in staff;

(2) there have been no facility-acquired COVID-19 confirmed cases for at least 14 consecutive days in individuals; and

(3) if an intermediate care facility has had previous cases of COVID-19 in staff or individuals, HHSC LTCR has conducted a verification survey and confirmed the following:

(A) all staff and individuals have fully recovered;

(B) the intermediate care facility has adequate staffing to continue care for all individuals and supervise visits permitted by this section; and

(C) the intermediate care facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(j) An intermediate care facility must provide instructional signage throughout the facility and proper visitor education regarding:

(1) the signs and symptoms of COVID-19 signs;

(2) infection control precautions; and

(3) other applicable facility practices (e.g., use of facemask or other appropriate PPE, specified entries and exits, routes to designated visitation areas, hand hygiene).

(k) An intermediate care facility with a facility visitation designation may allow outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits involving individuals and personal visitors. The following requirements apply to all visitation allowed under this subsection:

(1) Visits must be scheduled in advance and are by appointment only.

(2) Visitation appointments must be scheduled to allow time for cleaning and sanitization of the visitation area between visits.

(3) Open window visits, vehicle parades, outdoor visits, and plexiglass indoor visits are permitted as can be accommodated by the intermediate care facility only for individuals who are COVID-19 negative.

(4) Closed window visits and end-of-life visits are permitted for individuals who are COVID-19 negative, COVID-19 positive, or unknown COVID-19 status as can be accommodated by the intermediate care facility.

(5) Physical contact between individuals and visitors is prohibited, except for essential caregiver and end-of-life visits.

(6) Visits are permitted where adequate space is available that meets criteria and when adequate staff are available to monitor visits. Essential caregiver visits and end-of-life visits can take place in the individual's room or other area of the facility separated from other individuals. The intermediate care facility must limit the movement of the visitor through the facility to ensure interaction with other individuals is minimized.

(7) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit, except visitors participating in a vehicle parade or closed window visit.

(8) The individual must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(9) The intermediate care facility must ensure physical distancing of at least six feet is maintained between visitors and individuals at all times and limit the number of visitors and individuals in the visitation area as needed to ensure physical distancing is maintained. Essential caregiver and end-of-life visitors do not have to maintain physical distancing between themselves and the individual they are visiting but must maintain physical distancing between themselves and all other individuals, staff, and other visitors.

(10) The intermediate care facility must limit the number of visitors per individual per week, and the length of time per visit, to ensure equal access by all individuals to visitors.

(11) Cleaning and disinfecting of the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit.

(12) The intermediate care facility must ensure a comfortable and safe outdoor visiting area for outdoor visits, open window visits, and vehicle parades, considering outside air temperatures and ventilation.

(13) For outdoor visits, the intermediate care facility must designate an outdoor area for visitation that is separated from individuals and limits the ability of the visitor to interact with individuals.

(14) An intermediate care facility must provide hand washing stations, or hand sanitizer, to the visitor and individual before and after visits, except visitors participating in a vehicle parade or closed window visit.

(15) The visitor and the individual must practice hand hygiene before and after the visit, except visitors participating in a vehicle parade or closed window visit.

(l) The following requirements apply to vehicle parades:

(1) Visitors must remain in their vehicles throughout the parade.

(2) The intermediate care facility must ensure physical distancing of at least six feet is maintained between individuals throughout the parade.

(3) The intermediate care facility must ensure individuals are not closer than 10 feet to the vehicles for safety reasons.

(4) The individual must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(m) The following requirements apply to plexiglass indoor visits:

(1) The plexiglass booth must be installed in an area of the facility where it does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and does not offer

access to the rest of the facility or contact between the visitors and other individuals.

(2) Prior to using the booth, the facility must submit for approval a photo of the plexiglass visitation booth and its location in the facility to the Life Safety Code Program Manager in the LTCR Region in which the facility is located, and must receive approval from HHSC.

(3) The visit must be supervised by facility staff for the duration of the visit.

(4) The individual must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(5) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit.

(6) The facility shall limit the number of visitors and individuals in the visitation area as needed.

(n) A facility may allow a salon services visitor to enter the facility to provide services to an individual only if:

(1) the salon services visitor passes the screening described in subsection (c) of this section;

(2) the salon services visitor agrees to comply with the most current version of the Minimum Standard Health Protocols - Checklist for Cosmetology Salons/Hair Salons, located on website: https://open.texas.gov/; and

(3) the requirements of subsection (o) of this section are met.

(o) The following requirements apply to salon services visits:

(1) Each visit is limited to two hours, unless the intermediate care facility determines that it can only accommodate a visit for a shorter duration or that it can accommodate a longer duration and adjusts the duration of the visit accordingly.

(2) The visit may occur outdoors, in the individual's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other individuals.

(3) Salon services visitors do not have to maintain physical distancing between themselves and each individual they are visiting, but must maintain physical distancing between themselves and all other individuals and staff.

(4) The individual must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(5) The intermediate care facility must develop and enforce salon services visitation policies and procedures, which include:

(A) a testing strategy for salon services visitors;

(B) a written agreement that the salon services visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each salon services visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(D) the salon services visitor must wear a facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the intermediate care facility;

(E) expectations regarding using only designated entrances and exits as directed;

(F) limiting visitation to the area designated by the facility in accordance with paragraph (2) of this subsection;

(G) facility staff must escort the salon services visitor from the facility entrance to the designated visitation area at the start of each visit; and

(H) facility staff must escort the salon services visitor from the designated visitation area to the facility exit at the end of each visit;

(6) The intermediate care facility must:

(A) inform the salon services visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask or provide an approved facemask;

(C) maintain documentation of the salon services visitor's agreement to follow the applicable policies, procedures and requirements;

(D) maintain documentation of the salon services visitor's training as required in paragraph (5)(C) of this subsection;

(E) maintain documentation of the date of last COVID-19 test as reported by the salon services visitor;

(F) document the identity of each salon services visitor in the facility's records and verify the identity of the salon services visitor by creating a salon services visitor badge;

(G) maintain a record of each salon services visit, including:

(i) the date and time of the arrival and departure of the salon services visitor;

(ii) the name of the salon services visitor;

(iii) the name of the individual being visited; and

(iv) attestation that the identity of the salon services visitor was confirmed; and

(H) prevent visitation by the salon services visitor if the individual has an active COVID-19 infection.

(7) The salon services visitor must:

(A) wear a facemask over both the mouth and nose and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the intermediate care facility;

(B) have a negative COVID-19 test result from a test performed no more than 14 days before the first salon services visit, unless the intermediate care facility chooses to perform a rapid test prior to entry in the intermediate care facility;

(C) sign an agreement to leave the facility at the appointed time unless otherwise approved by the facility;

(D) self-monitor for signs and symptoms of COVID-19;

(E) not participate in visits if the salon services visitor has signs and symptoms of COVID-19, active COVID-19 infection, or other communicable diseases; and

(F) not participate in visits if the individual has an active COVID-19 infection.

(8) The facility may cancel the salon services visit if the salon services visitor fails to comply with the facility's policy regarding salon services visits or applicable requirements in this section.

(p) If, at any time after facility visitation designation is approved by HHSC, the area, unit, wing, hall, or building accommodat-

ing individuals who are COVID-19 negative, or facility-wide for small intermediate care facilities that received visitation designation in accordance with subsection (i) of this section, experiences an outbreak of COVID-19, the facility must notify the Regional Director in the LTCR Region where the facility is located that the area, unit, wing, hall, building or facility no longer meets visitation criteria, and all visitation, except a closed window visit, end-of-life visit, or visits by persons providing critical assistance including essential caregivers as defined in subsection (a)(1) and (a)(4)-(5) of this section, must be cancelled until the area, unit, wing, hall, building or facility meets the criteria described in subsections (h) or (i) of this section and visitation approval is provided by HHSC.

(q) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this rule or any minimum standard relating to an intermediate care facility, the intermediate care facility must comply with the executive order or other direction.

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 22, 2020.

TRD-202003907
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: September 24, 2020
Expiration date: January 21, 2021
For further information, please call: (512) 438-3161

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CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES SUBCHAPTER K. COVID-19 EMERGENCY RULE

26 TAC §553.2003

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, Subchapter K, COVID-19 Emergency Rule, new §553.2003, an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in a facility. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the proposal is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for Assisted Living Facility COVID-19 Response - Expansion of Reopening Visitation.

To protect assisted living facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to allow limited indoor and outdoor visitation in an assisted living facility. The purpose of the new rule is to describe the requirements related to such visits.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055, and Health and Safety Code §247.025 and §247.026. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by HHSC. Texas Health and Safety Code §247.026 requires the Executive Commissioner of HHSC to adopt rules prescribing minimum standards to protect the health and safety of assisted living residents.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 247.

§553.2003. Assisted Living Facility COVID-19 Response - Expansion of Reopening Visitation.

(a) The following words and terms, when used in this subchapter, have the following meanings.

(1) Closed window visit--A personal visit between a visitor and a resident during which the resident and visitor are separated by a closed window and the visitor does not enter the building permitted at all facilities, for all residents.

(2) COVID-19 negative--A person who has tested negative for COVID-19 or meets the criteria for discontinuation for transmission-based precautions, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(3) COVID-19 positive--A person who has tested positive for COVID-19 and does not yet meet Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(4) End-of-life visit--A personal visit between a visitor and a resident who is actively dying, permitted in all facilities for all residents at the end of life.

(5) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, private personal caregiver or court appointed guardian, who is at least 18 years old, designated to provide regular care and support to a resident.

(6) Essential caregiver visit--A personal visit between a resident and an essential caregiver as described in subsection (e) of this section. An essential caregiver visit is permitted in all facilities for COVID-19 negative and unknown COVID-19 status residents.

(7) Facility-acquired COVID-19 infection--COVID-19 infection that is acquired after admission to an assisted living facility and that was not present at the end of the 14-day quarantine period following admission or readmission.

(8) Large assisted living facility--An assisted living facility licensed for 17 or more residents.

(9) Open window visit--A personal visit between a visitor and a resident during which the resident and personal visitor are separated by an open window.

(10) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either a resident or paid or unpaid staff.

(11) Outdoor visit--A personal visit between a resident and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(12) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, family members or friends of residents at the end of life, and two designated essential caregivers as described in subsection (e) of this section.

(13) Persons with legal authority to enter--Law enforcement officers, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

(14) Plexiglass indoor visit--A personal visit between a resident and one or more personal visitors, during which the resident and the visitor are both inside the facility but within a booth separated by a plexiglass barrier and the resident remains on one side of the barrier and the visitor remains on the opposite side of the barrier.

(15) Providers of essential services--Contract doctors, contract nurses, home health and hospice workers, and mental health specialists whose services are necessary to ensure resident health and safety.

(16) Salon services visit--A personal visit between a resident and a salon services visitor as described in subsection (o) of this section. A salon services visit is permitted in all facilities for COVID-19 negative residents.

(17) Salon services visitor--A barber, beautician or cosmetologist providing hair care or personal grooming services to a resident.

(18) Small assisted living facility--An assisted living facility licensed for 16 or fewer residents.

(19) Unknown COVID-19 status--A person who is a new admission or readmission or who has spent one or more nights away from the facility, has had known exposure or close contact with a person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

(20) Vehicle parade--A personal visit between a resident and one or more personal visitors, during which the resident remains outdoors on the assisted living facility campus, and a visitor drives past in a vehicle.

(b) An assisted living facility must screen all visitors outside of the assisted living facility prior to allowing them to enter, with the exception of emergency services personnel entering the facility in an emergency and personal visitors participating in a vehicle parade or a closed window visit. Visitor screenings must be documented in a log kept at the entrance to the facility. Visitor screening logs must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(c) Visitors who meet any of the following screening criteria must leave the assisted living facility campus and reschedule the visit:

(1) fever defined as a temperature of 100.4 Fahrenheit and above;

(2) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(3) any other signs and symptoms as outlined by the Centers for Disease Control and Prevention (CDC) in Symptoms of Coronavirus at cdc.gov;

(4) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, unless the visitor is seeking entry to provide critical assistance; or

(5) has a positive COVID-19 test result from a test performed in the last 10 days.

(d) An assisted living facility may allow visitation by persons providing critical assistance, including essential caregivers, to enter the assisted living facility if they pass the screening in subsection (c) of this section, except as provided in subsection (e)(8)(H) and (e)(9)(F) of this section. An assisted living facility shall not prohibit entry of persons with legal authority to enter when performing their official duties unless they do not pass the screening in subsection (c) of this section.

(e) The following requirements apply to essential caregiver visits:

(1) There may be up to two permanently designated essential caregiver visitors per resident.

(2) Only one essential caregiver at a time may visit a resident.

(3) Each visit is limited to two hours, unless the assisted living facility can only accommodate a visit for a shorter duration or that it can accommodate a longer duration and adjusts the duration of the visit accordingly.

(4) The visit may occur outdoors, in the resident's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other residents.

(5) Essential caregiver visitors do not have to maintain physical distancing between themselves and the resident they are visiting but must maintain physical distancing between themselves and all other residents and staff.

(6) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(7) The assisted living facility must develop and enforce essential caregiver visitation policies and procedures, which include:

(A) a testing strategy for designated essential caregivers;

(B) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each designated essential caregiver on proper personal protective equipment (PPE) usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(D) wearing a facemask and other appropriate PPE recommended by CDC guidance and the facility's policy while in the assisted living facility;

(E) expectations regarding using only designated entrances and exits as directed;

(F) limiting visitation to the outdoor visitation area, the resident's room, or other area of the facility that limits the visitor's movement through the facility and interaction with other residents;

(G) facility staff must escort the essential caregiver from the facility entrance to the designated visitation area at the start of each visit; and

(H) facility staff must escort the essential caregiver from the designated visitation area to the facility exit at the end of each visit.

(8) The assisted living facility must:

(A) inform the essential caregiver of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy or provide an approved facemask and other PPE;

(C) maintain documentation of the essential caregiver visitor's agreement to follow the applicable policies, procedures and requirements;

(D) maintain documentation of the essential caregiver visitor's training as required in paragraph (7)(C) of this subsection;

(E) maintain documentation of the date of the last COVID-19 test as reported by the essential caregiver;

(F) document the identity of each essential caregiver in the resident's records and verify the identity of the essential caregiver by creating an essential caregiver visitor badge;

(G) maintain a record of each essential caregiver visit, including:

(i) the date and time of the arrival and departure of the essential caregiver visitor;

(ii) the name of the essential caregiver visitor;

(iii) the name of the resident being visited; and

(iv) attestation that the identity of the essential caregiver visitor was confirmed; and

(H) prohibit visitation by the essential caregiver if the resident has an active COVID-19 infection.

(9) The essential caregiver must:

(A) wear a facemask over both the mouth and nose and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the assisted living facility;

(B) have a negative COVID-19 test no more than 14 days before the first essential caregiver visit, unless the assisted living facility chooses to perform a rapid test prior to entry in the assisted living facility;

(C) sign an agreement to leave the facility at the appointed time unless otherwise approved by the facility;

(D) self-monitor for signs and symptoms of COVID-19;

(E) not participate in visits if the designated essential caregiver has signs and symptoms of COVID-19, active COVID-19 infection, or other communicable diseases; and

(F) not participate in visits if the resident has an active COVID-19 infection.

(f) An assisted living facility approved by the Texas Health and Human Services Commission (HHSC) may allow limited personal visitation as permitted by this section. Approved visitation designation for a facility is not required for a closed window visit, end-of-life visit, or visits by persons providing critical assistance including essential caregivers as defined in subsection (a)(1) and (a)(4) - (5) of this section. If an assisted living fails to comply with the requirements of this section, HHSC may rescind the visitation designation and may impose licensure remedies in accordance with Subchapter H of this chapter (relating to Enforcement).

(g) To request a facility visitation designation, an assisted living facility must submit a completed Long-term Care Regulation (LTCR) form 2194, COVID-19 Status Attestation Form, including a facility map indicating which areas, which include enclosed rooms such as bedrooms or activities rooms, units, wings, halls, or buildings which accommodate COVID-19 negative, COVID-19 positive, and unknown COVID-19 status residents, to the Regional Director in the LTCR Region where the facility is located. A facility with previous approval for visitation does not have to submit Form 2194 and a facility map, unless the previous visitation approval has been withdrawn, rescinded, or cancelled.

(h) To receive a facility visitation designation, an assisted living facility must demonstrate:

(1) there are separate areas, which include enclosed rooms such as bedrooms, or activities rooms, units, wings, halls, or buildings for resident cohorts who are COVID-19 positive, COVID-19 negative or unknown COVID-19 status;

(2) separate staff are working in the separate areas, units, wings, halls, or buildings for residents who are COVID-19 positive, COVID-19 negative or unknown COVID-19 status;

(3) there have been no confirmed COVID-19 cases for at least 14 consecutive days in staff working in the area, unit, wing, hall, or building which accommodates residents who are COVID-19 negative;

(4) there have been no facility-acquired COVID-19 confirmed cases for at least 14 consecutive days in residents in the COVID-19 negative area, unit, wing, hall, or building;

(5) staff are designated to work with only one resident cohort and the designation does not change from one day to another;

(6) evidence upon HHSC request of daily screening for staff and residents, if a testing strategy is not used; and

(7) if an assisted living facility has had previous cases of COVID-19 in staff or residents in the area, unit, wing, hall, or building which accommodates residents who are COVID-19 negative, HHSC LTCR has conducted a verification survey and confirmed the following:

(A) all staff and residents in the COVID-19 negative area, unit, wing, hall, or building have fully recovered;

(B) the assisted living facility has adequate staffing to continue care for all residents and monitor visits permitted by this section; and

(C) the assisted living facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(i) A small assisted living facility that cannot provide separate areas, including enclosed rooms such as bedrooms or activities rooms, units, wings, halls, or buildings for residents who are COVID-19 positive, COVID-19 negative or unknown COVID-19 status must demonstrate:

(1) there have been no confirmed COVID-19 cases for at least 14 consecutive days in staff;

(2) there have been no facility-acquired COVID-19 confirmed cases for at least 14 consecutive days in residents; and

(3) if an assisted living facility has had previous cases of COVID-19 in staff or residents, HHSC LTCR has conducted a verification survey and confirmed the following:

(A) all staff and residents have fully recovered;

(B) the assisted living facility has adequate staffing to continue care for all residents and monitor visits permitted by this section; and

(C) the assisted living facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(j) An assisted living facility must provide instructional signage throughout the facility and proper visitor education regarding:

(1) the signs and symptoms of COVID-19 signs;

(2) infection control precautions; and

(3) other applicable facility practices (e.g. use of facemask or other appropriate PPE, specified entries and exits, routes to be designated visitation areas, hand hygiene).

(k) An assisted living facility with a facility visitation designation may allow outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits involving residents and personal visitors. The following requirements apply to all visitation allowed under this subsection:

(1) Visits must be scheduled in advance and are by appointment only.

(2) Visitation appointments must be scheduled to allow time for cleaning and sanitation of the visitation area between visits.

(3) Outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits are permitted only for residents who are COVID-19 negative as can be accommodated by the assisted living facility.

(4) Closed window visits and end-of-life visits are permitted for residents who are COVID-19 negative, COVID-19 positive, or unknown COVID-19 status as can be accommodated by the assisted living facility.

(5) Physical contact between residents and visitors is prohibited, except for essential caregiver and end-of-life visits.

(6) Visits are permitted where adequate space is available that meets criteria and when adequate staff are available to monitor visits. Essential caregiver visits and end-of-life visits can take place in the resident's room or other area of the facility separated from other residents. The assisted living facility must limit the movement of the visitor through the facility to ensure interaction with other residents is minimized.

(7) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit, except visitors participating in a vehicle parade or closed window visit.

(8) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(9) The assisted living facility must ensure physical distancing of at least six feet is maintained between visitors and residents at all times and limit the number of visitors and residents in the visitation area as needed to ensure physical distancing is maintained. Essential caregiver and end of life visitors do not have to maintain physical distancing between themselves and the resident they are visiting but must maintain physical distancing between themselves and all other residents, staff, and other visitors.

(10) The assisted living facility must limit the number of visitors per resident per week, and the length of time per visit, to ensure equal access by all residents to visitors.

(11) Cleaning and disinfecting of the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit.

(12) The assisted living facility must ensure a comfortable and safe outdoor visiting area for outdoor visits, open window visits, and vehicle parades, considering outside air temperatures and ventilation.

(13) For outdoor visits, the assisted living facility must designate an outdoor area for visitation that is separated from residents and limits the ability of the visitor to interact with residents.

(14) An assisted living facility must provide hand washing stations, or hand sanitizer, to the visitor and resident before and after visits, except visitors participating in a vehicle parade or closed window visit.

(15) The visitor and the resident must practice hand hygiene before and after the visit, except visitors participating in a vehicle parade or closed window visit.

(l) The following requirements apply to vehicle parades:

(1) Visitors must remain in their vehicles throughout the parade.

(2) The assisted living facility must ensure physical distancing of at least six feet is maintained between residents throughout the parade.

(3) The assisted living facility must ensure residents are not closer than 10 feet to the vehicles for safety reasons.

(4) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(m) The following requirements apply to plexiglass indoor visits:

(1) The plexiglass booth must be installed in an area of the facility where it does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and does not offer access to the rest of the facility or contact between the visitors and other residents.

(2) Prior to using the booth, the facility must submit for approval a photo of the plexiglass visitation booth and its location in the facility to the Life Safety Code Program Manager in the LTCR Region in which the facility is located.

(3) The visit must be monitored by facility staff for the duration of the visit.

(4) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(5) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit.

(6) The facility shall limit the number of visitors and residents in the visitation area as needed.

(n) A facility may allow a salon services visitor to enter the facility to provide services to a resident only if:

(1) the salon services visitor passes the screening described in subsection (c) of this section;

(2) the salon services visitor agrees to comply with the most current version of the Minimum Standard Health Protocols-Checklist for Cosmetology Salons/Hair Salons, located on website: https://open.texas.gov/; and

(3) the requirements of subsection (o) of this section are met.

(o) The following requirements apply to salon services visits:

(1) Each visit is limited to two hours, unless the assisted living facility determines that it can only accommodate a visit for a shorter duration or that it can accommodate a longer duration and adjusts the duration of the visit accordingly.

(2) The visit may occur outdoors, in the resident's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other residents.

(3) Salon services visitors do not have to maintain physical distancing between themselves and each resident they are visiting but must maintain physical distancing between themselves and all other residents and staff.

(4) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(5) The assisted living facility must develop and enforce salon services visitation policies and procedures, which include:

(A) a testing strategy for salon services visitors;

(B) a written agreement that the salon services visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each salon services visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(D) the salon services visitor must wear a facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the assisted living facility;

(E) expectations regarding using only designated entrances and exits as directed;

(F) limiting visitation to the area designated by the facility in accordance with paragraph (2) of this subsection;

(G) facility staff must escort the salon services visitor from the facility entrance to the designated visitation area at the start of each visit; and

(H) facility staff must escort the salon services visitor from the designated visitation area to the facility exit at the end of each visit.

(6) The assisted living facility must:

(A) inform the salon services visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask or provide an approved facemask;

(C) maintain documentation of the salon services visitor's agreement to follow the applicable policies, procedures and requirements;

(D) maintain documentation of the salon services visitor's training as required in paragraph (5)(C) of this subsection;

(E) maintain documentation of the date of last COVID-19 test as reported by the salon services visitor;

(F) document the identity of each salon services visitor in the facility's records and verify the identity of the salon services visitor by creating a salon services visitor badge;

(G) maintain a record of each salon services visit, including:

(i) the date and time of the arrival and departure of the salon services visitor;

(ii) the name of the salon services visitor;

(iii) the name of the resident being visited; and

(iv) attestation that the identity of the salon services visitor was confirmed; and

(H) prevent visitation by the salon services visitor if the resident has an active COVID-19 infection.

(7) The salon services visitor must:

(A) wear a facemask over both the mouth and nose and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the assisted living facility;

(B) have a negative COVID-19 test result from a test performed no more than 14 days before the first salon services visit, unless the assisted living facility chooses to perform a rapid test prior to entry in the assisted living facility;

(C) sign an agreement to leave the facility at the appointed time unless otherwise approved by the facility;

(D) self-monitor for signs and symptoms of COVID-19;

(E) not participate in visits if the salon services visitor has signs and symptoms of COVID-19, active COVID-19 infection, or other communicable diseases; and

(F) not participate in visits if the resident has an active COVID-19 infection.

(8) The facility may cancel the salon services visit if the salon services visitor fails to comply with the facility's policy regarding salon services visits or applicable requirements in this section.

(p) If, at any time after facility visitation designation is approved by HHSC, the area, unit, wing, hall, or building accommodating residents who are COVID-19 negative, or facility-wide for small assisted living facilities that received visitation designation in accordance with subsection (i) of this section, experiences an outbreak of COVID-19, the facility must notify the Regional Director in the LTCR Region where the facility is located that the area, unit, wing, hall, building or facility no longer meets visitation criteria, and all visitation, except a closed window visit, end-of-life visit, or visits by persons providing critical assistance including essential caregivers as defined in subsection (a)(1) and (a)(4) - (5) of this section, must be cancelled until the area, unit, wing, hall, building or facility meets the criteria described in subsections (h) or (i) of this section.

(q) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this rule or any minimum standard relating to an assisted living facility, the assisted living facility must comply with the executive order or other direction.

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 22, 2020.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: September 24, 2020
Expiration date: January 21, 2021
For further information, please call: (512) 438-3161

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CHAPTER 558. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

SUBCHAPTER I. RESPONSE TO COVID-19 AND PANDEMIC-LEVEL COMMUNICABLE DISEASE

26 TAC §558.950

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 558 Licensing Standards for Home and Community Support Services Agencies, new §558.950, concerning an emergency rule in response to COVID-19 in order to describe requirements for visitation in a hospice inpatient unit. As authorized by Government Code §2001.034 the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for Hospice Inpatient Units COVID-19 Response - Reopening Visitation.

To protect clients in hospice inpatient units and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to allow limited indoor and outdoor visitation in a hospice inpatient unit. The purpose of the rule is to describe the requirements related to such visits.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §142.012. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of the HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §142.012, authorizes the Executive Commissioner of HHSC to adopt rules governing implementation of Chapter 142 of Texas Health and Safety Code, concerning Home and Community Support Services.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §142.012.

§558.950. Hospice Inpatient Units COVID-19 Response--Reopening Visitation.

(a) The following words and terms, when used in this section, have the following meanings.

(1) Closed window visit--A personal visit between a client and visitor during which the client and personal visitor are separated by a closed window and the visitor does not enter the building. A closed window visit is permitted at all hospice inpatient units and for all clients of a hospice inpatient unit.

(2) COVID-19 negative--A person who has tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(3) COVID-19 positive--A person who has tested positive for COVID-19 and does not yet meet Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(4) End-of-life visit--A personal visit between a visitor and a client who is actively dying. An end-of-life visit is permitted in all hospice inpatient units and for all clients of a hospice inpatient unit at the end of life.

(5) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, private personal caregiver or court appointed guardian, who is at least 18 years old and has been designated by a client or legal representative to provide regular care and support to the client.

(6) Essential caregiver visit--A personal visit between a client and a designated essential caregiver, as described in subsection (e) of this section. An essential caregiver visit is permitted in all hospice inpatient units for COVID-19 negative and unknown COVID-19 status clients.

(7) Facility-acquired COVID-19--A COVID-19 infection that is acquired after admission to a hospice inpatient unit and was not present at the end of the 14-day quarantine period following admission or readmission.

(8) Open window visit--A personal visit between a client and visitor during which the client and personal visitor are separated by an open window.

(9) Outbreak--One or more laboratory-confirmed cases of COVID-19 identified in either a client or paid or unpaid staff.

(10) Outdoor visit--A personal visit between a client and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(11) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, family members or friends of clients at the end of life, and designated essential caregivers as described in subsection (e) of this section.

(12) Persons with legal authority to enter--Law enforcement officers and government personnel performing their official duties.

(13) Plexiglass indoor visit--A personal visit between a client and one or more personal visitors, during which the client and the visitor are both inside the hospice inpatient unit but within a booth, separated by a plexiglass barrier, and the client remains on one side of the barrier and the visitor remains on the opposite side of the barrier.

(14) Providers of essential services--Hospice employees and contractors, including physicians, nurses, hospice aides, social workers, therapists, spiritual counselors, and volunteers.

(15) Salon services visit--A personal visit between a client and a salon services visitor, as described in subsection (n) of this section. A salon services visit is permitted in all hospice inpatient units for COVID-19 negative clients.

(16) Salon services visitor--A barber, beautician or cosmetologist providing hair care or personal grooming services to a client.

(17) Unknown COVID-19 status--The status of a person who is a new admission or readmission, has spent one or more nights away from the hospice inpatient unit, has had known exposure or close contact with a person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

(18) Vehicle parade--A personal visit between a client and one or more personal visitors, during which the client remains outdoors on the hospice inpatient unit grounds, and a visitor drives past in a vehicle.

(b) A hospice agency operating a hospice inpatient unit must screen all visitors outside of the unit prior to allowing them to enter, except emergency services personnel entering the unit in an emergency and personal visitors participating in a vehicle parade or a closed window visit. Visitor screenings must be documented in a log kept at the entrance to the hospice inpatient unit, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(c) Visitors who meet any of the following screening criteria must leave the hospice inpatient unit and reschedule the visit:

(1) fever, defined as a temperature of 100.4 Fahrenheit and above;

(2) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(3) any other signs and symptoms as outlined by the Centers for Disease Control and Prevention (CDC) in Symptoms of Coronavirus at cdc.gov;

(4) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, unless the visitor is seeking entry to provide critical assistance; or

(5) has a positive COVID-19 test result from a test performed in the last 10 days.

(d) A hospice agency operating a hospice inpatient unit may allow persons providing critical assistance, including essential caregivers, to enter the unit if they pass the screening in subsection (c) of this section, except as provided in subsections (e)(8)(H) and (e)(9)(F) of this section. A hospice agency operating a hospice inpatient unit shall not prohibit entry of persons with legal authority to enter when performing their official duties, unless they do not pass the screening in subsection (c) of this section.

(e) The following requirements apply to essential caregiver visits,

(1) There may be up to two permanently designated essential caregiver visitors per client.

(2) Only one essential caregiver at a time may visit a client.

(3) Each visit is limited to two hours, unless the hospice agency determines that it can only accommodate a visit for a shorter duration or that it can accommodate a longer duration and adjusts the duration of the visit accordingly.

(4) The visit may occur outdoors, in the client's room, or in another area in the hospice inpatient unit that limits visitor movement through the unit and interaction with other clients.

(5) Essential caregiver visitors do not have to maintain physical distancing between themselves and the client they are visiting, but they must maintain physical distancing between themselves and all other clients and staff.

(6) The client must wear a face mask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(7) The hospice agency operating a hospice inpatient unit must develop and enforce essential caregiver visitation policies and procedures, which include:

(A) a testing strategy for designated essential caregivers;

(B) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each designated essential caregiver on proper personal protective equipment (PPE) usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(D) the essential caregiver must wear a face mask, and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, while in the hospice inpatient unit;

(E) expectations regarding using only designated entrances and exits as directed;

(F) limiting visitation to the area designated by the hospice agency in accordance with paragraph (4) of this subsection;

(G) hospice agency staff must escort the essential caregiver from the hospice inpatient unit entrance to the designated visitation area at the start of each visit; and

(H) hospice agency staff must escort the essential caregiver from the designated visitation area to the hospice inpatient unit exit at the end of each visit.

(8) The hospice agency operating a hospice inpatient unit must:

(A) inform the essential caregiver visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's face mask, and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, or provide an approved face mask and other PPE;

(C) maintain documentation of the essential caregiver visitor's agreement to follow the applicable policies, procedures, and requirements;

(D) maintain documentation of the essential caregiver visitor's training, as required in paragraph (7)(C) of this subsection;

(E) maintain documentation of the date of last COVID-19 test as reported by the essential caregiver;

(F) document the identity of each essential caregiver in the client's records and verify the identity of the essential caregiver by creating an essential caregiver visitor badge;

(G) maintain a record of each essential caregiver visit, including:

(i) the date and time of the arrival and departure of the essential caregiver visitor;

(ii) the name of the essential caregiver visitor;

(iii) the name of the client being visited; and

(iv) attestation that the identity of the essential caregiver visitor was confirmed; and

(H) prevent visitation by the essential caregiver if the client has an active COVID-19 infection.

(9) The essential caregiver must:

(A) wear a face mask over both the mouth and nose, and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, while in the hospice inpatient unit;

(B) have a negative COVID-19 test result from a test performed no more than 14 days before the first essential caregiver visit, unless the hospice agency chooses to perform a rapid test prior to entry in the hospice inpatient unit;

(C) sign an agreement to leave the hospice inpatient unit at the appointed time, unless otherwise approved by the hospice agency;

(D) self-monitor for signs and symptoms of COVID-19;

(E) not participate in visits if the designated essential caregiver has signs and symptoms of COVID-19, active COVID-19 infection, or other communicable diseases; and

(F) not participate in visits if the client has an active COVID-19 infection.

(10) The hospice agency may cancel the essential caregiver visit if the essential caregiver fails to comply with the agency's policy regarding essential caregiver visits or applicable requirements in this section.

(f) A hospice agency operating a hospice inpatient unit approved by the Texas Health and Human Services Commission (HHSC) may allow limited personal visitation, as permitted by this section, upon receiving an approved visitation designation. Approved visitation designation for a hospice inpatient unit is not required for a closed window visit, end-of-life visit, or visits by persons providing critical assistance including essential caregivers. If a hospice agency operating a hospice inpatient unit fails to comply with the requirements of this section, HHSC may rescind the visitation designation and may take enforcement action in accordance with Subchapter F of this chapter.

(g) To request a visitation designation, a hospice agency operating a hospice inpatient unit must submit a completed Long-Term Care Regulatory (LTCR) Form 7004 (Reopening Visitation Status Attestation), including a map of the hospice inpatient unit indicating which areas, units, wings, halls, or buildings accommodate COVID-19 negative, COVID-19 positive, and unknown COVID-19 status clients, to the Regional Director in the LTCR Region where the hospice inpatient unit is located.

(h) To receive a visitation designation, a hospice agency operating a hospice inpatient unit must demonstrate that:

(1) it has separate areas, units, wings, halls, or buildings designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status clients cohorts;

(2) separate, dedicated staff are working exclusively in the separate areas, units, wings, halls, or buildings for clients who are COVID-19 positive, COVID-19 negative, or unknown COVID-19 status;

(3) there have been no confirmed COVID-19 cases for at least 14 consecutive days in staff working in the area, unit, wing, hall, or building that accommodates clients who are COVID-19 negative;

(4) there have been no facility-acquired COVID-19 confirmed cases for at least 14 consecutive days in clients in the COVID-19 negative area, unit, wing, hall, or building;

(5) staff are designated to work with only one client cohort and the designation does not change from one day to another; and

(6) if a hospice inpatient unit has had previous cases of COVID-19 in staff or clients in the area, unit, wing, hall, or building that accommodates clients who are COVID-19 negative, HHSC can confirm the following:

(A) all staff and clients in the COVID-19 negative area, unit, wing, hall, or building have fully recovered;

(B) the hospice agency has adequate staffing to continue care for all clients in the hospice inpatient unit and supervise visits permitted by this section; and

(C) the hospice inpatient unit is in compliance with infection control requirements and emergency rules related to COVID-19.

(i) A hospice agency operating a hospice inpatient unit must provide instructional signage throughout the unit and proper visitor education regarding:

(1) the signs and symptoms of COVID-19 signs;

(2) infection control precautions; and

(3) other applicable hospice inpatient unit practices (e.g., use of face mask or other appropriate PPE, specified entries and exits, routes to designated visitation areas, and hand hygiene).

(j) A hospice agency operating a hospice inpatient unit with a visitation designation may allow outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits involving clients and personal visitors. The following limits apply to all visitation allowed under this subsection.

(1) Visits must be scheduled in advance and are by appointment only.

(2) Visitation appointments must be scheduled to allow time for cleaning and sanitization of the visitation area between visits.

(3) Open window visits, vehicle parades, outdoor visits, and plexiglass indoor visits are permitted, as can be accommodated by the hospice inpatient unit, only for clients who are COVID-19 negative.

(4) Closed window visits and end-of-life visits are permitted for clients who are COVID-19 negative, COVID-19 positive, or unknown COVID-19 status, as can be accommodated by the hospice inpatient unit.

(5) Physical contact between clients and visitors is prohibited, except for essential caregiver visits and end-of-life visits.

(6) Visits are permitted only where adequate space is available that meets criteria and when adequate staff are available to monitor visits. Essential caregiver visits and end-of-life visits can take place in the client's room or other area of the hospice inpatient unit separated from other clients. The hospice inpatient unit must limit the movement of the visitor through the unit to ensure interaction with other clients is minimized.

(7) The visitor must wear a face mask or face covering over both the mouth and nose throughout the visit, except visitors participating in a vehicle parade or closed window visit.

(8) The client must wear a face mask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(9) The hospice inpatient unit must ensure physical distancing of at least six feet is maintained between visitors and clients at all times and limit the number of visitors and clients in the visitation area, as needed to ensure physical distancing is maintained. Essential caregiver visitors and end-of-life visitors do not have to maintain physical distancing between themselves and the client they are visiting, but they must maintain physical distancing between themselves and all other clients, staff, and other visitors.

(10) The hospice inpatient unit must limit the number of visitors per client per week, and the length of time per visit, to ensure equal access by all clients to visitors.

(11) Cleaning and disinfecting of the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit.

(12) The hospice agency must ensure a comfortable and safe outdoor visiting area, considering outside air temperatures and ventilation, for outdoor visits, open window visits, and vehicle parades.

(13) For outdoor visits, the hospice agency must designate an outdoor area for visitation that is separated from clients and limits the ability of the visitor to interact with clients.

(14) A hospice agency must provide hand washing stations, or hand sanitizer, to the visitor and client before and after visits, except visitors participating in a vehicle parade or closed window visit.

(15) The visitor and the client must practice hand hygiene before and after the visit, except visitors participating in a vehicle parade or closed window visit.

(k) The following requirements apply to vehicle parades.

(1) Visitors must remain in their vehicles throughout the parade.

(2) The hospice inpatient unit must ensure physical distancing of at least six feet is maintained between clients throughout the parade.

(3) The hospice inpatient unit must ensure clients are not closer than 10 feet to the vehicles for safety reasons.

(4) The client must wear a face mask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(l) The following requirements apply to plexiglass indoor visits.

(1) The plexiglass booth must be installed in an area of the hospice inpatient unit where it does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and does not offer access to the rest of the unit or contact between the visitors and other clients.

(2) Prior to using the booth, the hospice agency must submit a photo of the plexiglass visitation booth and its location in the hospice inpatient unit, to the Life Safety Code Program Manager in the LTCR Region in which the unit is located, and receive approval from HHSC.

(3) The visit must be supervised by hospice agency staff for the duration of the visit.

(4) The client must wear a face mask or face covering (if tolerated) throughout the visit.

(5) The visitor must wear a face mask or face covering over both the mouth and nose throughout the visit.

(6) The hospice inpatient unit shall limit the number of visitors and clients in the visitation area, as needed.

(m) If a hospice agency operating a hospice inpatient unit will allow salon services visits, then the hospice agency may allow a salon services visitor to enter the hospice inpatient unit to provide services to a client only if:

(1) the salon services visitor passes the screening described in subsection (c) of this section;

(2) the salon services visitor agrees to comply with the most current version of the Minimum Standard Health Protocols - Checklist for Cosmetology Salons/Hair Salons, located online at open.texas.gov; and

(3) the requirements of subsection (n) of this section are met.

(n) The following requirements apply to salon services visits.

(1) Each visit is limited to two hours, unless the hospice agency determines that it can only accommodate a visit for a shorter duration or that it can accommodate a longer duration and adjusts the duration of the visit accordingly.

(2) The visit may occur outdoors, in the client's room, or in another area in the hospice inpatient unit that limits visitor movement through the unit and interaction with other clients.

(3) Salon services visitors do not have to maintain physical distancing between themselves and the client they are visiting, but they must maintain physical distancing between themselves and all other clients and staff.

(4) The client must wear a face mask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(5) The hospice agency operating a hospice inpatient unit must develop and enforce salon services visitation policies and procedures, which include:

(A) a testing strategy for salon services visitors;

(B) a written agreement that the salon services visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each salon services visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(D) the salon services visitor must wear a face mask, and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, while in the hospice inpatient unit;

(E) expectations regarding using only designated entrances and exits, as directed;

(F) limiting visitation to the area designated by the hospice agency in accordance with paragraph (2) of this subsection;

(G) hospice agency staff must escort the salon services visitor from the hospice inpatient unit entrance to the designated visitation area at the start of each visit; and

(H) hospice agency staff must escort the salon services visitor from the designated visitation area to the hospice inpatient unit exit at the end of each visit.

(6) The hospice agency operating a hospice inpatient unit must:

(A) inform the salon services visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's face mask or provide an approved face mask;

(C) maintain documentation of the salon services visitor's agreement to follow the applicable policies, procedures, and requirements;

(D) maintain documentation of the salon services visitor's training, as required in paragraph (5)(C) of this subsection;

(E) maintain documentation of the date of last COVID-19 test, as reported by the salon services visitor;

(F) document the identity of each salon services visitor in the hospice agency's records and verify the identity of the salon services visitor by creating a salon services visitor badge;

(G) maintain a record of each salon services visit, including:

(i) the date and time of the arrival and departure of the salon services visitor;

(ii) the name of the salon services visitor;

(iii) the name of the client being visited; and

(iv) attestation that the identity of the salon services visitor was confirmed; and

(H) prevent visitation by the salon services visitor if the client has an active COVID-19 infection.

(7) The salon services visitor must:

(A) wear a face mask over both the mouth and nose, and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, while in the hospice inpatient unit;

(B) have a negative COVID-19 test result from a test performed no more than 14 days before the first salon services visit, unless the hospice agency chooses to perform a rapid test prior to entry in the hospice inpatient unit;

(C) sign an agreement to leave the hospice inpatient unit at the appointed time, unless otherwise approved by the hospice agency;

(D) self-monitor for signs and symptoms of COVID-19;

(E) not participate in visits if the salon services visitor has signs and symptoms of COVID-19, active COVID-19 infection, or other communicable diseases; and

(F) not participate in visits if the client has an active COVID-19 infection.

(8) The hospice agency operating a hospice inpatient unit may cancel the salon services visit if the salon services visitor fails to comply with the hospice agency's policy regarding salon services visits or applicable requirements in this section.

(o) If, at any time after a visitation designation is approved by HHSC, the area, unit, wing, hall, or building accommodating clients who are COVID-19 negative experiences an outbreak of COVID-19, the hospice agency must notify the Regional Director in the LTCR Region where the hospice inpatient unit is located that the area, unit, wing, hall, or building no longer meets visitation criteria, and all visitation, except a closed window visit, end-of-life visit, or visits by persons providing critical assistance including essential caregivers, must be cancelled until the area, unit, wing, hall, or building meets the criteria described in subsection (g) of this section and visitation approval is provided by HHSC.

(p) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this rule or any minimum standard relating to a hospice agency operating a hospice inpatient unit, the hospice agency must comply with the executive order or other direction.

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 22, 2020.

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Chief Clerk
Health and Human Services Commission
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For further information, please call: (512) 438-3161

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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

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

40 TAC §9.198, §9.199

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Part 1, Texas Administrative Code, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, new §9.198 and §9.199, concerning emergency rules in response to COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of these Emergency Rules for Program Provider Response to COVID-19 and HCS Expansion of Reopening Visitation.

To protect individuals receiving Home and Community-based Services (HCS) and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency rules to reduce the risk of spreading COVID-19 to individuals in the HCS program. These new rules describe the requirements HCS program providers must immediately put into place and the requirements they must follow for visitation, essential caregivers, and day habilitation.

STATUTORY AUTHORITY

The emergency rules are adopted under Texas Government Code §2001.034, 531.0055 and §531.021 and Texas Human Resources Code §32.021. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Government Code §531.021 provides HHSC with the authority to administer federal Medicaid funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Texas Human Resources Code §32.021 provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections implement Texas Government Code §531.0055, Texas Government Code §531.021, and Texas Human Resources Code §32.021.

§9.198. Program Provider Response to COVID-19 Emergency Rule.

(a) Applicability. Based on state law and federal guidance, Texas Health and Human Services Commission (HHSC) finds COVID-19 to be a health and safety risk and requires a program provider to take the following measures. The screening required by this section does not apply to emergency services personnel entering the residence in an emergency situation.

(b) Definitions. The following words and terms, when used in this section, have the following meanings.

(1) Individual--A person enrolled in the HCS program.

(2) Isolation--Practices that separate persons who are sick to protect those who are not sick.

(3) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, and family members or friends of individuals at the end of life and designated essential caregivers as described in §9.199(c) of this subchapter (relating to HCS Provider Response to COVID-19-Expansion of Reopening Visitation).

(4) Persons with legal authority to enter--Law enforcement officers, representatives of Disability Rights Texas, and government personnel performing their official duties.

(5) Probable case of COVID-19--A case that meets the clinical criteria for epidemiologic evidence as defined and posted by the Council of State and Territorial Epidemiologists.

(6) Provider of essential services--Contract doctors or nurses, hospice workers, and individuals operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority (LMHA), whose services are necessary to ensure individual health and safety.

(7) Residence--A host home/companion care, three-person, or four-person residence, as defined by the HCS Billing Guidelines, unless otherwise specified.

(c) Screening requirements.

(1) A program provider must screen all visitors outside of the residence prior to allowing them to enter, except emergency services personnel entering the property in an emergency and personal visitors participating in a vehicle parade or closed window visit. Visitor screenings must be documented in a log, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(2) Visitors who meet any of the following screening criteria must leave the residence and reschedule the visit:

(A) fever, defined as a temperature of 100.4 Fahrenheit or above;

(B) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(C) any other signs and symptoms identified by the Centers for Disease Control and Prevention (CDC) in Symptoms of Coronavirus at cdc.gov;

(D) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, unless the visitor is seeking entry to provide critical assistance; or

(E) has a positive COVID-19 test result from a test performed in the last 10 days.

(3) A program provider may allow persons providing critical assistance, including essential caregivers, to enter the residence if

they pass the screening in paragraph (c)(2) of this section, except as provided in subsections §9.199(c)(7)(G) and §9.199(c)(8)(D). A program provider shall not prohibit entry of persons with legal authority to enter when performing their official duties, unless they do not pass the screening in subsection (c)(2) of this section.

(4) A program provider must not prohibit an individual who lives in the residence from entering the residence even if the individual meets any of the screening criteria.

(d) Communication.

(1) Program providers must contact their local health department, or the Department of State Health Services (DSHS) if there is no local health department, if the program provider knows an individual has COVID-19.

(2) Within 24 hours of becoming aware of an individual or staff member with confirmed COVID-19, a program provider must notify HHSC via encrypted or secure email to waiversurvey.certification@hhsc.state.tx.us. If a program provider is not able to send a secure or encrypted email, the program provider should notify HHSC by emailing waiversurvey.certification@hhsc.state.tx.us. A program provider is not required to provide identifying information of a staff member to HHSC when reporting a positive COVID-19 test result and must comply with applicable law regarding patient privacy. A program provider must comply with any additional HHSC monitoring requests.

(3) A program provider must notify an individual's legally authorized representative (LAR) if the individual is confirmed to have COVID-19, or if the presence of COVID-19 is confirmed in the residence.

(4) A program provider must notify any individual who lives in the residence, and his or her LAR, if the program provider is aware of probable or confirmed cases among program provider staff or individuals living in the same residence.

(5) A program provider must not release personally identifying information regarding confirmed or probable cases.

(e) Infection Control.

(1) A program provider must develop and implement an infection control policy that:

(A) prescribes a cleaning and disinfecting schedule for the residence, including high-touch areas and any equipment used to care for more than one individual;

(B) is updated to reflect current CDC or DSHS guidance; and

(C) is revised if a shortcoming is identified.

(2) A program provider must provide training to service providers on the infection control policy initially and upon updates.

(3) A program provider must educate staff and individuals on infection prevention, including hand hygiene, physical distancing, the use of personal protective equipment (PPE) and cloth face coverings, and cough etiquette.

(4) A program provider must encourage physical distancing, defined as maintaining six feet of separation between persons and avoiding physical contact.

(5) A program provider must require staff to wear a mask or cloth face covering over both the nose and mouth if not providing care to an individual with COVID-19, or appropriate PPE as defined by CDC if providing care to an individual with COVID-19. For individuals who rely on lip reading or facial cues for communication needs, service providers may use face masks with a clear screen over the mouth or temporarily remove it during communication. Service providers should maintain physical distance as practicable.

(6) Provider staff who have confirmed or probable COVID-19 may not provide services to individuals, except that:

(A) a host home/companion care provider may provide services to an individual who has also tested positive for COVID-19; or

(B) live-in staff providing supervised living services may provide services to an individual who has also tested positive for COVID-19 in accordance with §9.174(a)(37) of this subchapter (relating to Certification Principles: Service Delivery).

(7) A program provider must monitor the health status of a staff person providing services under paragraph (6) of this subsection to verify that the staff person continues to be able to deliver services. If the staff person's condition worsens, the program provider must activate the service back-up plan to ensure the individual receives services.

(8) A program provider must isolate individuals with confirmed or probable COVID-19 within the residence if possible. If individuals cannot be isolated within the residence, the program provider must convene the service planning team to identify alternative residential arrangements.

(9) A program provider must screen individuals for signs or symptoms of COVID-19 at least twice a day.

(f) A program provider must update the emergency plan developed in accordance with §9.178(d) of this subchapter (relating to Certification Principles: Quality Assurance) to address COVID-19. The updated plan must include:

(1) plans for maintaining infection control procedures and supplies of PPE during evacuation;

(2) a list of locations and alternate locations for evacuation both for individuals with confirmed or probable COVID-19 and for individuals with negative or unknown status; and

(3) a list of supplies needed if required to shelter in place, including PPE.

(g) A program provider must develop and implement a staffing policy that addresses how the program provider plans to minimize the movement of staff between health care providers and encourage communication among providers regarding COVID-19 probable and confirmed cases. The policy must limit sharing of staff between residences, unless doing so will result in staff shortages.

(h) A program provider may contract with a day habilitation site only if the day habilitation site agrees to comply with the most current guidance from DSHS for day habilitation sites. In addition:

(1) the program provider must facilitate and document an individual's informed decision to return to outside day habilitation, including discussion of:

(A) available options and alternatives;

(B) risks of attending day habilitation; and

(C) PPE, hygiene, and physical distancing;

(2) except for individuals in host home and own home/family home settings, the program provider must ensure the availability of PPE required for the individual to safely attend day habilitation; and

(3) the program provider must include in its contract with a day habilitation site a requirement for the day habilitation site to com-

municate with individuals, program providers, staff, and family when the day habilitation site is aware of a probable or confirmed case of COVID-19 among day habilitation site staff or individuals. The requirement must prohibit a day habilitation site from releasing personally identifying information regarding confirmed or probable cases.

(i) Regarding meals, the program provider must:

(1) plate food and serve it to individuals rather than using communal serving bowls and shared serving utensils;

(2) encourage physical distancing of at least six feet;

(3) sanitize the meal preparation and dining areas before and after meals; and

(4) encourage individuals to practice hand hygiene before and after meals.

(j) If a service provider at a host home, three-person or four-person home, or a staff member at a respite or Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB) setting, has confirmed or probable COVID-19, the service provider or staff member must discontinue providing services until eligible to return to work in accordance with the CDC guidance document, "Criteria for Return to Work for Healthcare Personnel with Suspected or Confirmed COVID-19." The program provider must activate the back-up service plan.

(k) A program provider may conduct the annual inspection required by §9.178(c) of this subchapter by video conference. A program provider must conduct an on-site inspection required by §9.178(c) of this subchapter within 30 days of the expiration or repeal of the public health emergency.

(l) A program provider must develop a safety plan for a four-person residence if the annual fire marshal inspection required by §9.178(e)(3)(A) of this subchapter is expired and document attempts to obtain the fire marshal inspection. The safety plan should require:

(1) verification that fire extinguishers are fully charged;

(2) a schedule for fire watches and plan to increase fire drills if the residence does not have a sprinkler system installed or monitored fire panel;

(3) verification of staff training on the needs of the individual in the event of an emergency; and

(4) verification that emergency plans are updated to reflect needs as listed in paragraph (3) of this subsection.

(m) The program provider must train an individual on the risks of leaving and encourage isolation of the individual to the extent possible upon return. The individual must be screened upon return in accordance with subsection (c) of this section.

(n) Flexibilities in federal requirements granted by the Centers for Medicare and Medicaid services during the COVID-19 pandemic, including waivers under the Social Security Act §1135, activation of Appendix K amending a 1915(c) home and community-based waiver, and other federal flexibilities or waivers are applied to corresponding state certification principles for HCS. HHSC will identify and describe federal flexibilities and flexibility in corresponding state certification principles in guidance issued through HCS provider letters.

(o) If this emergency rule is more restrictive than any minimum standard relating to the Home and Community-based Services program, this emergency rule will prevail so long as this emergency rule is in effect.

(p) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than any minimum standard relating to the Home and Community-based Services program or this emergency rule, the program provider must comply with the executive order or other direction.

§9.199. HCS Provider Response to COVID-19-Expansion of Reopening Visitation.

(a) Applicability. This rule does not apply to host home/companion care, unless otherwise specified.

(b) Definitions. The following words and terms, when used in this section, have the following meanings.

(1) Closed window visit--A personal visit between a personal visitor and an individual during which the individual and personal visitor are separated by a closed window and the personal visitor does not enter the residence.

(2) COVID-19 negative--A person who has either tested negative for COVID-19 or who exhibits no symptoms of COVID-19 and has had no known exposure to the virus in the last 14 days.

(3) COVID-19 positive--A person who has tested positive for COVID-19 or who is presumed positive for COVID-19 and who has not yet met the Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(4) End-of-life visit--A personal visit between a personal visitor and an individual who is actively dying, permitted in all residences for all individuals at the end of life

(5) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, private personal caregiver, or court-appointed guardian, who is at least 18 years old, designated to provide regular care and support to an individual.

(6) Essential caregiver visit--A personal visit between an individual and an essential caregiver as described in subsection (c) of this section. An essential caregiver visit is permitted in all facilities for individuals with COVID-19 negative status and unknown COVID-19 status.

(7) Individual--A person enrolled in the HCS program.

(8) Open window visit--A personal visit between an individual and a personal visitor during which the individual and personal visitor are separated by an open window.

(9) Outbreak--One or more confirmed or probable cases of COVID-19 identified in either an individual or paid or unpaid staff.

(10) Outdoor visit--A personal visit between an individual and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(11) Physical distancing--Maintaining a minimum of six feet between persons, avoiding gathering in groups in accordance with state and local orders, and avoiding unnecessary physical contact.

(12) Plexiglass indoor visit--A personal visit between an individual and one or more personal visitors, during which the individual and the personal visitor are both inside the residence but within a booth separated by a plexiglass barrier.

(13) Probable case of COVID-19--A case that meets the clinical criteria for epidemiologic evidence as defined and posted by the Council of State and Territorial Epidemiologists.

(14) Unknown COVID-19 status--The status of an individual who is a new admission or readmission, has spent one or more

nights away from the residence, has had known exposure or close contact with a person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

(15) Vehicle parade--A personal visit between an individual and one or more personal visitors, during which the individual remains outdoors on the residence's property and a personal visitor drives past in a vehicle.

(c) The following requirements apply to essential caregiver visits.

(1) There may be up to two permanently designated essential caregivers per individual.

(2) Only one essential caregiver visitor at a time may visit an individual.

(3) The visit may occur outdoors, in the individual's bedroom, or in another area in the home that limits the essential caregiver visitor's movement through the residence and interaction with other individuals.

(4) Essential caregiver visitors do not have to maintain physical distancing between themselves and the individual they are visiting but must maintain physical distancing between themselves and all other individuals and staff.

(5) The individual must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(6) The program provider must develop and enforce essential caregiver visitation policies and procedures, which include:

(A) a written agreement that the essential caregiver visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(B) training each essential caregiver visitor on proper personal protective equipment (PPE) usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(C) a requirement that the essential caregiver visitor must wear a facemask and any other PPE in accordance with CDC guidance and the program provider's policy while in the residence;

(D) limiting visitation to the area designated by the program provider in accordance with (c)(3) of this subsection;

(E) a requirement that facility staff must escort the essential caregiver visitor from the entrance of the residence to the designated visitation area at the start of each visit; and

(F) a requirement that facility staff must escort the essential caregiver visitor from the designated visitation area to the exit of the residence at the end of each visit.

(7) The program provider must:

(A) inform the essential caregiver visitor of applicable policies, procedures, and requirements;

(B) approve the essential caregiver visitor's facemask and any other PPE in accordance with CDC guidance and the program provider's policy, or provide an approved facemask and other PPE;

(C) maintain documentation of the essential caregiver visitor's agreement to follow the applicable policies, procedures, and requirements;

(D) maintain documentation of the essential caregiver visitor's training as required in paragraph (6)(B) of this subsection;

(E) maintain documentation of the identity of each essential caregiver visitor in the individual's records and verify the identity of the essential caregiver visitor at the time of each visit;

(F) maintain a record of each essential caregiver visit, including:

(i) the date and time of the arrival and departure of the essential caregiver visitor;

(ii) the name of the essential caregiver visitor;

(iii) the name of the individual being visited; and

(iv) attestation that the identity of the essential caregiver visitor was verified; and

(G) prevent visitation by the essential caregiver visitor if the individual has an active COVID-19 infection.

(8) The essential caregiver visitor must:

(A) wear a facemask over both the mouth and nose and any other appropriate PPE throughout the visit in accordance with CDC guidance and the program provider's policy while in the residence;

(B) self-monitor for signs and symptoms of COVID-19;

(C) not participate in essential caregiver visits if he or she has signs and symptoms of COVID-19, active COVID-19 infection, or other communicable diseases; and

(D) not participate in visits if the individual has an active COVID-19 infection.

(9) The program provider may cancel the essential caregiver visit if the essential caregiver visitor fails to comply with the program provider's policy regarding essential caregiver visits or applicable requirements in this section.

(d) A program provider may allow limited personal visitation as permitted by this section upon meeting the qualifications described in subsection (e) of this section. These criteria are not required for a closed window visit, end-of-life visit, or visits by persons providing critical assistance including essential caregiver visitors as defined in subsection (b)(1), (b)(4), and (b)(5) of this section. If a program provider fails to comply with the requirements of this section, HHSC may impose licensure remedies in accordance with §9.171 of this subchapter (relating to HHSC Surveys and Residential Visits of a Program Provider) and §9.181 of this subsection (relating to Administrative Penalties).

(e) To allow limited personal visitation in accordance with subsection (h) of this section, a program provider must complete and maintain in the residence Texas Health and Human Services Commission (HHSC) attestation form that HHSC may request for verification, stating that:

(1) there have been no confirmed or probable cases of COVID-19 for at least 14 consecutive days among staff or individuals;

(2) the residence has access to sufficient staff and PPE to provide essential care and services to the individuals living in the residence;

(3) the service back-up plan for host home services has been evaluated and determined to be viable at the time of review;

(4) the program provider has a plan to respond to new confirmed or probable cases of COVID-19 in the residence; and

(5) the emergency preparedness plan required by §9.178(d) of this subchapter (relating to Certification Principles: Quality Assurance) has been updated to address COVID-19.

(f) An attestation form is not required for a residence to conduct closed window visits, end-of-life visits, or visits by persons providing critical assistance, including essential caregivers, as defined in subsection (b)(1), (b)(5) and (b)(6) of this section.

(g) If, at any time after the attestation form is completed, the residence experiences an outbreak of COVID-19 as defined in paragraph (b)(9) of this section, the attestation is no longer in effect, and all visitation allowed by subsection (h) of this section, must be cancelled. When the residence again meets the criteria described in subsection (e) of this section, the program provider completes a new HHSC attestation form.

(h) A program provider with an attestation form in effect may allow outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits involving individuals and personal visitors. The following limits apply to all visitation allowed under this subsection.

(1) Open window visits, vehicle parades, outdoor visits, and plexiglass indoor visits are permitted as can be accommodated by the program provider only for individuals who are COVID-19 negative.

(2) Closed window visits and end-of-life visits are permitted for individuals who are COVID-19 negative, COVID-19 positive, or unknown COVID-19 status as can be accommodated by the program provider.

(3) Physical contact between individuals and visitors is prohibited, except for essential caregiver visits and end-of-life visits.

(4) Visits are permitted only where adequate space is available that meets the criteria and when adequate staff are available to comply with this section. Essential caregiver visits and end-of-life visits can take place in the individual's room or other area of the residence separated from other individuals. The program provider must limit the movement of the visitor through the residence to ensure interaction with other individuals is minimized.

(5) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit, except visitors participating in a vehicle parade or closed window visit.

(6) The individual must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(7) The program provider must remind personal visitors and individuals about physical distancing of at least six feet and face mask or face covering requirements either verbally or with a notice posted visible to personal visitors or handed to them. The program provider must limit the number of visitors and individuals in the visitation area as needed to ensure physical distancing is maintained. Essential caregiver and end-of-life visitors do not have to maintain physical distancing between themselves and the individual they are visiting, but they must maintain physical distancing between themselves and all other individuals, staff, and other visitors.

(8) Cleaning and disinfecting of the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit. The program provider must schedule visits as necessary to allow time for sanitization between visits.

(9) The program provider must ensure a comfortable and safe outdoor visiting area for outdoor visits, open window visits, and vehicle parades, considering outside air temperatures, weather conditions, and ventilation.

(10) For outdoor visits, the program provider must designate an outdoor area for visitation that is separated from individuals and limits the ability of the visitor to interact with individuals.

(11) A program provider must provide hand washing stations or hand sanitizer to the visitor and individual before and after visits, except visitors participating in a vehicle parade or closed window visit.

(12) The visitor and the individual must practice hand hygiene before and after the visit, except visitors participating in a vehicle parade or closed window visit.

(i) The following requirements apply to vehicle parades.

(1) Personal visitors must remain in their vehicles throughout the parade.

(2) The program provider must encourage physical distancing of at least six feet between individuals throughout the parade.

(3) The program provider must prohibit individuals from being closer than 10 feet to the vehicles for safety reasons.

(4) The program provider must encourage individuals to wear a cloth face covering or mask over both the mouth and nose, if tolerated, throughout the parade.

(j) The following requirements apply to plexiglass indoor visits.

(1) The plexiglass barrier must be installed in an area where it does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and minimizes access to the rest of the residence and contact between personal visitors and individuals.

(2) The program provider must require the personal visitor to use a face mask or face covering over both the mouth and nose throughout the visit and encourage the individual to do so if tolerated.

(k) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this rule or any minimum standard relating to a program provider, the program provider must comply with the executive order or other direction.

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.

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3161

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

40 TAC §9.597

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 9, Intellectual Disability Services - Medicaid State Operating Agency Responsibilities, new §9.597, concerning Program Provider Response

to COVID-19 Emergency Rule. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 can be effective for not longer than 120 days and can be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for provider response to COVID-19.

To protect individuals receiving Texas Home Living services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to reduce the risk of spreading COVID-19 to individuals in the Texas Home Living program. This new rule describes the requirements that Texas Home Living providers must immediately put into place.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034, 531.0055, and 531.021 and Texas Human Resources Code §32.021. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by HHSC. Texas Government Code §531.021 provides HHSC with the authority to administer federal Medicaid funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Texas Human Resources Code §32.021 provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section implements Texas Government Code §531.0055 and §531.021, and Texas Human Resources Code §32.021.

§9.597. Program Provider Response to COVID-19 Emergency Rule.

(a) Based on state law and federal guidance, HHSC finds COVID-19 to be a health and safety risk and requires a program provider to take the following measures. The screening required by this section does not apply to emergency services personnel in an emergency situation.

(b) In this section:

(1) Individual--A person enrolled in the TxHmL program.

(2) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, and family members or friends of individuals at the end of life.

(3) Persons with legal authority to enter--Law enforcement officers, representatives of Disability Rights Texas, and government personnel performing their official duties.

(4) Probable case of COVID-19--A person who meets the clinical criteria and epidemiologic evidence as described and posted by the Council of State and Territorial Epidemiologists.

(5) Providers of essential services--Contract doctors, contract nurses, hospice workers, and people operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority (LMHA) whose services are necessary to ensure an individual's health and safety.

(c) Screening requirements.

(1) A program provider must inform service providers of Centers for Disease Control and Prevention (CDC) and the Department of State Health Services (DSHS) recommendations regarding screening protocols, which include the following screening criteria:

(A) fever, defined as a temperature of 100.4 Fahrenheit and above;

(B) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(C) any other signs and symptoms as outlined by CDC in Symptoms or Coronavirus at cdc.gov;

(D) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, unless the visitor is seeking entry to provide critical assistance; and

(E) has a positive COVID-19 test result from a test performed in the last 10 days.

(2) A program provider must require service providers to notify the program provider of a fever, symptoms, or other criteria listed in paragraph (1) of this subsection prior to the start of the shift. Service providers must not provide services to an individual if they meet any of the criteria in paragraph (1) of this subsection.

(3) Service providers must screen individuals before providing service in accordance with paragraph (1) of this subsection. If the individual fails screening, the service provider must not provide services and must immediately notify the program provider.

(d) Communication.

(1) A program provider must contact the local health department, or DSHS if there is no local health department, if the program provider becomes aware an individual served in the program or a staff member has COVID-19.

(2) Within 24 hours of becoming aware of an individual or staff member with confirmed COVID-19, a program provider must notify HHSC via encrypted or secure email to waiversurvey.certification@hhsc.state.tx.us. If a program provider is not able to send a secure or encrypted email, the program provider should notify HHSC by emailing waiversurvey.certification@hhsc.state.tx.us. A program provider is not required to provide identifying information of a staff member to HHSC when reporting a positive COVID-19 test result, and must comply with applicable law regarding patient privacy. A program provider must comply with any additional HHSC monitoring requests.

(3) Upon becoming aware of an individual or staff member with confirmed or probable COVID-19, a program provider must notify

the following of the actual or potential presence of COVID-19, without disclosing personally identifiable information:

(A) the individual; and

(B) the legally authorized representative of the individual.

(e) Infection control.

(1) A program provider must educate staff and individuals on infection prevention, including hand hygiene, physical distancing, the use of personal protective equipment (PPE) and cloth face coverings, and cough etiquette.

(2) A program provider must encourage physical distancing during service delivery to the extent possible, defined as maintaining six feet of separation between persons and avoiding physical contact, and encourage the use of masks and gloves if more direct support is needed.

(3) A service provider with a confirmed or probable case of COVID-19 must not provide services until eligible to return to work in accordance with the CDC guidance document, "Criteria for Return to Work for Healthcare Personnel with Suspected or Confirmed COVID-19." The program provider must activate the service backup plan.

(f) Day habilitation. A program provider may contract with a day habilitation site only if the day habilitation site agrees to comply with the most current guidance from DSHS for day habilitation sites. In addition:

(1) The program provider must facilitate and document informed decision making for an individual's decision to return to outside day habilitation, including discussion of:

(A) available options and alternatives;

(B) risks of attending day habilitation; and

(C) PPE, hygiene, and physical distancing.

(2) The program provider must include in its contract with a day habilitation site a requirement for the day habilitation site to communicate with individuals, program providers, staff, and family when the day habilitation site is aware of a probable or confirmed case of COVID-19 among day habilitation site staff or individuals. The requirement must prohibit a day habilitation site from releasing personally identifying information regarding confirmed or probable cases.

(g) If this emergency rule is more restrictive than any certification principle relating to Texas Home Living, this emergency rule will prevail so long as this emergency rule is in effect.

(h) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any certification principle relating to Texas Home Living, the Texas Home Living program provider must comply with the executive order or other direction.

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.

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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER CC. COVID-19 EMERGENCY RULE

40 TAC §19.2803

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, new §19.2803, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in a facility. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. This emergency rulemaking reflects the continued reopening of the State of Texas. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Nursing Facility COVID-19 Response - Expansion of Reopening Visitation.

To protect nursing facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting a new emergency rule to require limited indoor and outdoor visitation in a nursing facility. The purpose of the new rule is to describe the requirements related to such visits.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §242.001 and §242.037. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and

provision of health and human services by the health and human services system. Texas Health and Safety Code §242.037 requires the Executive Commissioner of HHSC to make and enforce rules prescribing minimum standards quality of care and quality of life for nursing facility residents. Texas Health and Safety Code §242.001 states the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for residents who are living in a nursing facility.

The new rule implements Texas Government Code §531.0055 and §531.021, Texas Health and Safety Code Chapter 242, and Texas Human Resources Code §32.021.

§19.2803. Nursing Facility COVID-19 Response - Expansion of Reopening Visitation.

(a) The following words and terms, when used in this subchapter, have the following meanings.

(1) Closed window visit--A personal visit between a visitor and a resident during which the resident and visitor are separated by a closed window and the visitor does not enter the building. A closed window visit is permitted at all facilities and for all residents.

(2) COVID-19 negative--A person who has tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(3) COVID-19 positive--The status of a person who has tested positive for COVID-19 and does not yet meet Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(4) End-of-life visit--A personal visit between a visitor and a resident who is actively dying. An end-of-life visit is permitted in all facilities and for all residents at the end of life.

(5) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, private personal caregiver or court appointed guardian, who is at least 18 years old and has been designated by the resident or legal representative to provide regular care and support to a resident.

(6) Essential caregiver visit-- A personal visit between a resident and a designated essential caregiver as described in subsection (f) of this section. An essential caregiver visit is permitted in all facilities for COVID-19 negative and unknown COVID-19 status residents.

(7) Facility-acquired COVID-19 infection--COVID-19 infection that is acquired after admission in a nursing facility and was not present at the end of the 14 day quarantine period following admission or readmission.

(8) Open window visit--A personal visit between a visitor and a resident during which the resident and personal visitor are separated by an open window.

(9) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either a resident or paid or unpaid staff.

(10) Outdoor visit--A personal visit between a resident and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(11) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, family members or friends of residents at the end of life and two designated essential caregivers as described in subsection (f) of this section.

(12) Persons with legal authority to enter--Law enforcement officers, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

(13) Plexiglass indoor visit--A personal visit between a resident and one or more personal visitors, during which the resident and the visitor are both inside the facility but within a booth separated by a plexiglass barrier and the resident remains on one side of the barrier and the visitor remains on the opposite side of the barrier.

(14) Providers of essential services--Contract doctors, contract nurses, hospice workers, and individuals operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority (LMHA), whose services are necessary to ensure resident health and safety.

(15) Salon services visit--A personal visit between a resident and a salon services visitor as described in subsection (q) of this section. A salon services visit is permitted in all facilities for COVID-19 negative residents.

(16) Salon services visitor--A barber, beautician, or cosmetologist providing hair care or personal grooming services to a resident.

(17) Unknown COVID-19 status--The status of a person who is a new admission or readmission, has spent one or more nights away from the facility, has had known exposure or close contact with a person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

(18) Vehicle parade--A personal visit between a resident and one or more personal visitors, during which the resident remains outdoors on the nursing facility campus, and a visitor drives past in a vehicle.

(b) All nursing facilities, including licensed-only facilities, must comply with the COVID-19 testing requirements specified by 42 CFR §483.80(h).

(c) A nursing facility must screen all visitors outside of the nursing facility prior to allowing them to enter, except emergency services personnel entering the facility or facility campus in an emergency, and personal visitors participating in a vehicle parade or a closed window visit. Visitor screenings must be documented in a log kept at the entrance to the facility, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(d) Visitors who meet any of the following screening criteria must leave the nursing facility campus and reschedule the visit:

(1) fever, defined as a temperature of 100.4 Fahrenheit and above;

(2) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(3) any other signs and symptoms as outlined by CDC in Symptoms of Coronavirus at cdc.gov;

(4) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, unless the visitor is seeking entry to provide critical assistance; or

(5) has a positive COVID-19 test result from a test performed in the last 10 days.

(e) A nursing facility must allow persons providing critical assistance, including essential caregivers, to enter the nursing facility if they pass the screening in subsection (d) of this section, except as provided in subsection (f)(8)(H) and (f)(9)(F) of this section.

(f) The following requirements apply to essential caregiver visits.

(1) There may be up to two permanently designated essential caregiver visitors per resident.

(2) Only one essential caregiver at a time may visit a resident.

(3) Each visit is limited to two hours, unless the nursing facility determines that it can only accommodate a visit for a shorter duration or that it can accommodate a longer duration and adjusts the duration of the visit accordingly.

(4) The visit may occur outdoors, in the resident's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other residents.

(5) Essential caregiver visitors do not have to maintain physical distancing between themselves and the resident they are visiting, but must maintain physical distancing between themselves and all other residents and staff.

(6) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(7) The nursing facility must develop and enforce essential caregiver visitation policies and procedures, which include:

(A) a testing strategy for designated essential caregivers;

(B) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each designated essential caregiver on proper personal protective equipment (PPE) usage and infection control measures, hand hygiene and cough and sneeze etiquette;

(D) the essential caregiver must wear a facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the nursing facility;

(E) expectations regarding using only designated entrances and exits as directed;

(F) limiting visitation to the area designated by the facility in accordance with paragraph (4) of this subsection;

(G) facility staff must escort the essential caregiver from the facility entrance to the designated visitation area at the start of each visit; and

(H) facility staff must escort the essential caregiver from the designated visitation area to the facility exit at the end of each visit.

(8) The nursing facility must:

(A) inform the essential caregiver visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy, or provide an approved facemask and other appropriate PPE;

(C) maintain documentation of the essential caregiver visitor's agreement to follow the applicable policies, procedures and requirements;

(D) maintain documentation of the essential caregiver visitor's training as required in paragraph (7)(C) of this subsection;

(E) maintain documentation of the date of last COVID-19 test as reported by the essential caregiver;

(F) document the identity of each essential caregiver in the resident's records and verify the identity of the essential caregiver by creating an essential caregiver visitor badge;

(G) maintain a record of each essential caregiver visit, including:

(i) the date and time of the arrival and departure of the essential caregiver visitor;

(ii) the name of the essential caregiver visitor;

(iii) the name of the resident being visited; and

(iv) attestation that the identity of the essential caregiver visitor was confirmed; and

(H) prevent visitation by the essential caregiver if the resident has an active COVID-19 infection.

(9) The essential caregiver must:

(A) wear a facemask over both the mouth and nose and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the nursing facility;

(B) have a negative COVID-19 test result from a test performed no more than 14 days before the first essential caregiver visit, unless the nursing facility chooses to perform a rapid test prior to entry in the nursing facility;

(C) sign an agreement to leave the facility at the appointed time unless otherwise approved by the facility;

(D) self-monitor for signs and symptoms of COVID-19;

(E) not participate in visits if the designated essential caregiver has signs and symptoms of COVID-19, active COVID-19 infection, or other communicable diseases; and

(F) not participate in visits if the resident has an active COVID-19 infection.

(10) The facility may cancel the essential caregiver visit if the essential caregiver fails to comply with the facility's policy regarding essential caregiver visits or applicable requirements in this section.

(g) A nursing facility approved by the Texas Health and Human Services Commission (HHSC) must allow limited personal visitation as permitted by this section upon receiving an approved visitation designation. Approved visitation designation for a facility is not required for a closed window visit, end-of-life visit, or visits by persons providing critical assistance including essential caregivers as defined in subsection (a)(1), (a)(4), and (a)(5) of this section. If a nursing facility fails to comply with the requirements of this section, HHSC may rescind the visitation designation and may impose licensure remedies in accordance with Subchapter V of this chapter.

(h) To request a facility visitation designation, a nursing facility must submit a completed LTCR Form 2194 ("COVID-19 Status Attestation Form"), including a facility map indicating which areas, units, wings, halls, or buildings accommodate COVID-19 negative, COVID-19 positive, and unknown COVID-19 status residents, to the

Regional Director in the LTCR Region where the facility is located. A facility with previous approval for visitation designation does not have to submit Form 2194 and a facility map, unless the previous visitation approval has been withdrawn, rescinded, or cancelled. However, the facility must comply with requirements in subsection (o)(2) of this section for plexiglass indoor visits.

(i) To receive a facility visitation designation, a nursing facility must demonstrate that:

(1) it has separate areas, units, wings, halls, or buildings designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status resident cohorts;

(2) separate dedicated staff are working exclusively in the separate areas, units, wings, halls, or buildings for residents who are COVID-19 positive, COVID-19 negative or unknown COVID-19 status;

(3) there have been no confirmed COVID-19 cases for at least 14 consecutive days in staff working in the area, unit, wing, hall, or building which accommodates residents who are COVID-19 negative;

(4) there have been no facility-acquired COVID-19 confirmed cases for at least 14 consecutive days in residents in the COVID-19 negative area, unit, wing, hall, or building;

(5) staff are designated to work with only one resident cohort and the designation does not change from one day to another; and

(6) if a nursing facility has had previous cases of COVID-19 in staff or residents in the area, unit, wing, hall, or building which accommodates residents who are COVID-19 negative, HHSC LTCR has conducted a verification survey and confirmed the following:

(A) all staff and residents in the COVID-19 negative area, unit, wing, hall, or building have fully recovered;

(B) the nursing facility has adequate staffing to continue care for all residents and supervise visits permitted by this section; and

(C) the nursing facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(j) Each nursing facility must submit Form 2194 to the Regional Director in the LTCR Region where the facility is located, whether the facility meets or does not meet the criteria for expansion of reopening visitation. A nursing facility that does not meet the criteria for expansion of reopening visitation designation must:

(1) permit closed window visits, end-of-life visits, and persons providing critical assistance, including essential caregiver visits;

(2) develop and implement a plan to meet the visitation designation criteria as defined in this section; and

(3) submit the plan to the Regional Director in the LTCR Region where the facility is located within 5 days of submitting the form or of receiving notification from HHSC that the nursing facility was not approved for visitation designation.

(k) A nursing facility shall use the COVID-19 county positivity rate as additional information to determine how to facilitate indoor visitation. The COVID-19 county positivity rate can be found at https://data.cms.gov/stories/s/COVID-19-Nursing-Home-Data/bkwz-xpvg. A nursing facility may use the county positivity rate provided by the county as long as the county positivity rate is updated at least weekly.

(1) A nursing facility located in a county with a positivity rate up to 10 percent must permit visitation in accordance with this section.

(2) A nursing facility located in a county with a positivity rate greater than 10 percent must limit visitation to outdoor visits, closed window visits, end-of-life visits, and essential caregiver visits as defined by this section and must not permit indoor plexiglass visits.

(l) A nursing facility must provide instructional signage throughout the facility and proper visitor education regarding:

(1) the signs and symptoms of COVID-19;

(2) infection control precautions; and

(3) other applicable facility practices (e.g., use of facemask or other appropriate PPE, specified entries and exits, routes to designated visitation areas, hand hygiene).

(m) A nursing facility with a facility visitation designation must allow outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits involving residents and personal visitors. The following limits apply to all visitation allowed under this subsection.

(1) Visits must be scheduled in advance and are by appointment only.

(2) Visitation appointments must be scheduled to allow time for cleaning and sanitization of the visitation area between visits.

(3) Open window visits, vehicle parades, outdoor visits, and plexiglass indoor visits are permitted as can be accommodated by the nursing facility only for residents who are COVID-19 negative.

(4) Closed window visits and end-of-life visits are permitted for residents who are COVID-19 negative, COVID-19 positive, or unknown COVID-19 status as can be accommodated by the nursing facility.

(5) Physical contact between residents and visitors is prohibited, except for essential caregiver or end-of-life visits.

(6) Visits are permitted only where adequate space is available that meets criteria and when adequate staff are available to monitor visits. Essential caregiver visits and end-of-life visits can take place in the resident's room or other area of the facility separated from other residents. The nursing facility must limit the movement of the visitor through the facility to ensure interaction with other residents is minimized.

(7) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit, except visitors participating in a vehicle parade or closed window visit.

(8) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(9) The nursing facility must ensure physical distancing of at least six feet is maintained between visitors and residents at all times and limit the number of visitors and residents in the visitation area as needed to ensure physical distancing is maintained. Essential caregiver and end-of-life visitors do not have to maintain physical distancing between themselves and the resident they are visiting, but they must maintain physical distancing between themselves and all other residents, staff, and other visitors.

(10) The nursing facility must limit the number of visitors per resident per week, and the length of time per visit, to ensure equal access by all residents to visitors.

(11) Cleaning and disinfecting of the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit.

(12) The nursing facility must ensure a comfortable and safe outdoor visiting area for outdoor visits, open window visits, and vehicle parades considering outside air temperatures and ventilation.

(13) For outdoor visits, the nursing facility must designate an outdoor area for visitation that is separated from residents and limits the ability of the visitor to interact with residents.

(14) A nursing facility must provide hand washing stations, or hand sanitizer, to the visitor and resident before and after visits, except visitors participating in a vehicle parade or closed window visit.

(15) The visitor and the resident must practice hand hygiene before and after the visit, except visitors participating in a vehicle parade or closed window visit.

(n) The following requirements apply to vehicle parades.

(1) Visitors must remain in their vehicles throughout the parade.

(2) The nursing facility must ensure physical distancing of at least six feet is maintained between residents throughout the parade.

(3) The nursing facility must ensure residents are not closer than 10 feet to the vehicles for safety reasons.

(4) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(o) The following requirements apply to plexiglass indoor visits.

(1) The plexiglass booth must be installed in an area of the facility where it does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and does not offer access to the rest of the facility or contact between the visitors and other residents.

(2) Prior to using the booth, the facility must submit a photo of the plexiglass visitation booth and its location in the facility to the Life Safety Code Program Manager in the LTCR Region in which the facility is located, and must receive approval from HHSC.

(3) The visit must be supervised by facility staff for the duration of the visit.

(4) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(5) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit.

(6) The facility shall limit the number of visitors and residents in the visitation area as needed.

(p) A facility may allow a salon services visitor to enter the facility to provide services to a resident only if:

(1) the salon services visitor passes the screening described in subsection (d) of this section;

(2) the salon services visitor agrees to comply with the most current version of the Minimum Standard Health Protocols- Checklist for Cosmetology Salons/Hair Salons located at https://open.texas.gov/; and

(3) the requirements of subsection (q) of this section are met.

(q) The following requirements apply to salon services visits.

(1) Each visit is limited to two hours, unless the nursing facility determines that it can only accommodate a visit for a shorter duration or that it can accommodate a longer duration and adjusts the duration of the visit accordingly.

(2) The visit may occur outdoors, in the resident's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other residents.

(3) Salon services visitors do not have to maintain physical distancing between themselves and each resident they are visiting, but must maintain physical distancing between themselves and all other residents and staff.

(4) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(5) The nursing facility must develop and enforce salon services visitation policies and procedures, which include:

(A) a testing strategy for salon services visitors;

(B) a written agreement that the salon services visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each salon services visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(D) the salon services visitor must wear a facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the nursing facility;

(E) expectations regarding using only designated entrances and exits as directed;

(F) limiting visitation to the area designated by the facility in accordance with paragraph (2) of this subsection;

(G) facility staff must escort the salon services visitor from the facility entrance to the designated visitation area at the start of each visit; and

(H) facility staff must escort the salon services visitor from the designated visitation area to the facility exit at the end of each visit.

(6) The nursing facility must:

(A) inform the salon services visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask or provide an approved facemask;

(C) maintain documentation of the salon services visitor's agreement to follow the applicable policies, procedures, and requirements;

(D) maintain documentation of the salon services visitor's training as required in paragraph (5)(C) of this subsection;

(E) maintain documentation of the date of last COVID-19 test as reported by the salon services visitor;

(F) document the identity of each salon services visitor in the facility's records and verify the identity of the salon services visitor by creating a salon services visitor badge; and

(G) maintain a record of each salon services visit, including:

(i) the date and time of the arrival and departure of the salon services visitor;

(ii) the name of the salon services visitor;

(iii) the name of the resident being visited; and

(iv) attestation that the identity of the salon services visitor was confirmed; and

(H) prevent visitation by the salon services visitor if the resident has an active COVID-19 infection.

(7) The salon services visitor must:

(A) wear a facemask over both the mouth and nose and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the nursing facility;

(B) have a negative COVID-19 test result from a test performed no more than 14 days before the first salon services visit, unless the nursing facility chooses to perform a rapid test prior to entry in the nursing facility;

(C) sign an agreement to leave the facility at the appointed time unless otherwise approved by the facility;

(D) self-monitor for signs and symptoms of COVID-19;

(E) not participate in visits if the salon services visitor has signs and symptoms of COVID-19, active COVID-19 infection, or other communicable diseases; and

(F) not participate in visits if the resident has an active COVID-19 infection.

(8) The facility may cancel the salon services visit if the salon services visitor fails to comply with the facility's policy regarding salon services visits or applicable requirements in this section.

(r) If, at any time after facility visitation designation is approved by HHSC, the area, unit, wing, hall, or building accommodating residents who are COVID-19 negative experiences an outbreak of COVID-19, the facility must notify the Regional Director in the LTCR Region where the facility is located, that the area, unit, wing, hall, or building no longer meets visitation criteria, and all visitation, except a closed window visit, end-of-life visit, or visits by persons providing critical assistance including essential caregivers as defined in subsection (a)(1) and (a)(4)-(5) of this section, must be cancelled until the area, unit, wing, hall, or building meets the criteria described in subsection (g) of this section and visitation approval is provided by HHSC.

(s) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this rule or any minimum standard relating to a nursing facility, the nursing facility must comply with the executive order or other direction.

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 22, 2020.

TRD-202003929
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: September 24, 2020
Expiration date: January 21, 2021
For further information, please call: (512) 438-3161

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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 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1012

The Texas Education Agency (TEA) proposes an amendment to §61.1012, concerning contracts and tuition for education outside district. The proposed amendment would update references to Texas Education Code (TEC), Chapter 42, which was recodified by House Bill (HB) 3, 86th Texas Legislature, 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: TEC, §48.154, allows districts to contract for students to be educated in another district under TEC, §25.039. Section 61.1012 implements the statute by defining home districts, receiving districts, tuition amount, and calculation of the tuition limit amount charged by the receiving district to the home district. The rule also specifies the notification and appeal process provided to districts regarding the calculation of the tuition limit amount and authorizes the commissioner's decision as final.

The proposed amendment to §61.1012 would update cross references to TEC, Chapter 42, in subsection (b) and (b)(2). HB 3, 86th Texas Legislature, 2019, recodified TEC, Chapter 42, as Chapter 48.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect there are no additional costs 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 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 create a new regulation; 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. Lopez 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 updating references to rules that were recodified as a result of HB 3, 86th Texas Legislature, 2019. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

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 October 2, 2020, and ends November 2, 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 October 2, 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 amendment is proposed under Texas Education Code (TEC), §25.039, which allows school districts that do not offer each grade level from Kindergarten through Grade 12 to provide by contract for students residing in the district who are at grade levels not offered by the district to be educated at those grade levels in one or more other districts; TEC, §48.003, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which defines the eligibility criteria of students entitled to receive benefits from the Foundation School Program; and TEC, §48.154, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019,

which provides an allotment to school districts contracted for students to be educated in another school district.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§25.039; 48.003, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019; and §48.154, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019.

§61.1012. Contracts and Tuition for Education Outside District.

(a) (No change.)

(b) Tuition charge for transfer students. For the purposes of calculating the tuition allotment of the home district as authorized by the Texas Education Code (TEC), §48.154 [~~§42.106~~], the amount of tuition that may be attributed to a home district for a transfer student in payment for that student's education may not exceed an amount per enrollee calculated for each receiving district. The calculated limit applies only to tuition paid to a receiving district for the education of a student at a grade level not offered in the home district. Tuition may be set at a rate higher than the calculated limit if both districts enter a written agreement, but the calculated tuition limit will be used in the calculation of the tuition allotment for the home district. The calculation will use the most currently available data in an ongoing school year to determine the limit that applies to the subsequent school year. For purposes of this section, the number of students enrolled in a district will be appropriately adjusted to account for students ineligible for the Foundation School Program funding and those eligible for half-day attendance.

(1) (No change.)

(2) Excess M&O revenue per enrollee. A district's excess M&O revenue per enrollee is defined as the sum of state aid in accordance with the TEC, Chapter 48, Subchapters B, C, D, and E [~~42, Subchapters B, C, and F, plus the state aid generated in accordance with the TEC, §42.2516(b)~~]. These state aid amounts are added to M&O tax collections, and the sum is divided by enrollment to determine the amount of total state and local revenue per enrolled student. The amount of state aid gained by the addition of one transfer student is subtracted from the total amount of state and local revenue per student to determine the revenue shortfall created by the addition of one student. M&O taxes exclude the local share of any lease purchases funded in the Instructional Facilities Allotment (IFA) as referenced in the TEC, Chapter 46, Subchapter A, and taxes paid to a tax increment fund authorized by the Texas Tax Code, Chapter 311.

(A) - (B) (No change.)

(3) - (4) (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 September 21, 2020.

TRD-202003869
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 475-1497

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19 TAC §61.1016

The Texas Education Agency (TEA) proposes an amendment to §61.1016, concerning hazardous transportation funding. The proposed amendment would reflect statutory changes resulting from House Bill (HB) 3, 86th Texas Legislature, 2019, by updating a cross reference and lowering the rate for high-risk-of-violence walking areas from $1.08 to $1.00 per mile.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §48.151, allows a school district to apply for up to 10% of its regular transportation allotment in additional funding to transport children who live within two miles of their campus but are subject to hazardous traffic conditions or a high risk for violence when walking to and from school. To be eligible for funding under the statute, districts must adopt a board policy that identifies specific hazardous or high-risk-of-violence areas for which the allocation is requested. In determining these areas, districts are to consult with local law enforcement agencies and must obtain law enforcement records that document a high incidence of violent crimes. Districts may use all or part of additional funds to support community walking transportation programs.

The proposed amendment to §61.1016 would update the rule to implement statutory changes resulting from HB 3, 86th Texas Legislature, 2019.

In subsection (a), the reference to TEC, §42.155, would be updated to §48.151 to reflect recodification by HB 3.

In subsection (e), the rate for high-risk-of-violence walking areas would be changed from $1.08 to $1.00 per mile, and the subsection would specify that the rate aligns with regular route services rather than special education route services. The amendment would align with HB 3 changes to the regular transportation program allotment and the current General Appropriations Act, which has set the allotment at $1.00 per mile.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect there are no additional costs 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 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 create a new regulation; 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. Lopez 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 statutory changes made by HB 3, 86th Texas Legislature, 2019. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

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 October 2, 2020, and ends November 2, 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 October 2, 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 amendment is proposed under Texas Education Code (TEC), §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program; TEC, §48.151(d), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which authorizes hazardous transportation funding for areas within two miles of a campus where students would be subject to hazardous traffic conditions or a high risk of violence when walking to and from school; TEC, §48.151(d-1), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which requires the school district board of trustees to provide an explanation of the hazardous traffic conditions or areas presenting a high risk of violence applicable to that district and to identify the specific hazardous or high-risk areas for which the allocation is requested by consulting with local law enforcement agencies and obtaining law enforcement records that document a high incidence of violent crimes; and TEC, §48.151(d-2), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which allows school districts to use all or part of additional funds to support community walking transportation programs and requires the commissioner to adopt rules for the administration of TEC, §48.151.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.004 and §48.151, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019.

§61.1016. Hazardous Transportation Funding.

(a) General provisions. This section implements the Texas Education Code (TEC), §48.151(d)-(d-2) (Transportation Allotment) [~~§42.155~~], which allows a school district to apply for up to an additional 10% of its regular transportation allotment to be used for the transportation of students living within two miles of the school they attend who would be subject to hazardous traffic conditions or a high risk of violence if they walked to school.

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

(1) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

(2) Hazardous traffic condition--An area within two miles of a campus where no walkway is provided and children must walk along or cross a freeway or expressway, an underpass, an overpass or a bridge, an uncontrolled major traffic artery, an industrial or commercial area, or another comparable condition.

(3) Area presenting a high risk of violence--An area within two miles of a campus that law enforcement records indicate presents a high incidence of violent crimes.

(c) Eligibility. A school district or county is eligible to report Hazardous Area Service Annual Mileage in the Foundation School Program (FSP) Transportation application if the school district submits to the Texas Education Agency (TEA) a policy adopted by the local board of trustees that:

(1) explains the specific hazardous traffic conditions or areas presenting high risk for violence that apply to the district and exist within two miles of its campuses; and

(2) if a school district elects to implement community walking transportation programs or innovative school safety projects, requires such district-supported community walking transportation programs or innovative school safety projects to:

(A) utilize trained adults with current background checks to either walk students to their home or school or to stand guard along safe routes; and

(B) provide financial reports to the district each semester.

(d) Reporting. School districts are required to submit a Hazardous Area Policy prior to the start of the school year and to report annual Hazardous Area Service mileage by August 1 of each school year on the Home-to-School/School-to-Home section of the FSP Transportation Route Services Report. School districts requesting funds for an area presenting a high risk of violence must provide to TEA, contemporaneously with the explanation required by subsection (c) of this section, consolidated law enforcement records that document violent crimes identified by reporting agencies within the relevant jurisdiction.

(e) Funding formula. Funding for hazardous traffic and high-risk-of-violence routes is limited to 10% of the district's two or more mile only service. Hazardous transportation funding for students riding the bus will be calculated at the standard rate for regular transportation services. Funding for high-risk-of-violence walking areas will be calculated at the regular [~~special education~~] route services rate of $1.00 [~~$1.08~~] per mile.

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 September 21, 2020.

TRD-202003870
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 475-1497

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CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1071

The Texas Education Agency (TEA) proposes an amendment to §97.1071, concerning special program performance. The proposed amendment would clarify existing statutory provisions; reflect changes to the Texas Education Code (TEC) related to compliance monitoring, reading diagnosis, and dyslexia and related disorders by Senate Bill (SB) 2075, 86th Texas Legislature, 2019; and update terminology and cross references.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 97.1071 defines the procedures for special program monitoring and requirements a school district must engage in with TEA based on a determined level of performance derived from certain data sources.

The proposed amendment would add new subsection (a) to clarify and update language related to the commissioner's authority to conduct random, targeted, or cyclical reviews authorized under TEC, §39.056, either remotely or on-site to ensure compliance with and supports for improvement with applicable state and federal requirements for certain special populations of students. In addition, it would clarify authority for application of intensive or special investigations authorized under TEC, §39.057, for certain special populations of students.

New subsection (b) would be added to apply the general supervision and monitoring activities under subsection (a) to compliance with statutory requirements for dyslexia and related disorders. This addition would clarify TEA's authority and align the rule with TEC, §28.006, as amended by SB 2075, 86th Texas Legislature, 2019; TEC, §38.003; and the State Board of Education's rule related to dyslexia and related disorders in 19 TAC §74.28. SB 2075, 86th Texas Legislature, 2019, amended TEC, §28.006, which relates to diagnosis of student reading development and comprehension. New TEC, §28.006(g-2), was added to require school districts to notify certain parents or guardians of a program providing students with reading disabilities the ability to borrow audiobooks free of charge. In addition, new TEC, §28.006(l) was added to require TEA to adopt rules to develop procedures designed to allow TEA to effectively audit, monitor, and periodically conduct site visits to ensure compliance with the requirements of TEC, §28.006; identify problems in complying; and develop reasonable and appropriate remedial strategies to address noncompliance.

Amended subsections (c)-(i) would remove references to a specific data system, the Intervention Stage and Activity Manager (ISAM), and update the reference to 19 TAC §97.1005, which has been renamed from Performance Based Monitoring Analysis System to Results Driven Accountability (RDA). The rule would be amended throughout to update terminology contained within the RDA and resulting monitoring activities. These changes would clarify the agency's requirements and activities when monitoring special populations of students under the authority of TEC, §§39.056-39.058.

In addition, the section name would be updated to "Special Program Performance; Monitoring, Review, and Supports" to clarify the contents of the rule and align with TEA's current systems and naming conventions.

FISCAL IMPACT: Jennifer Alexander, associate commissioner for review and supports, has determined that for the first five-year period the proposal is in effect there are no additional costs 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 expand an existing regulation. The proposed amendment would update and clarify the agency's general supervision and monitoring activities for school district compliance with statutory requirements related to reading diagnoses as well as dyslexia and related disorders.

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 create a new regulation; would not 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: Ms. Alexander 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 ensuring that rule language is based on current law and providing school districts with clarifications on special populations monitoring activities and requirements. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

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 October 2, 2020, and ends November 2, 2020. Public hearings on the proposal are scheduled for 1:00 p.m. on October 14 and 15, 2020. The public may participate in the October 14 hearing virtually by registering in advance for the meeting at https://zoom.us/meeting/register/tJUpf-uurzkqG9dFrQPd0leNgHOteoXN7SPk. The public may participate in the October 15 hearing virtually by registering in advance for the meeting at https://zoom.us/meeting/register/tJcudOCppjsiE9CBQNhWNBz1nMVTZylm7DTY. Registrants will receive a confirmation email containing information about joining the meeting(s). Both hearings will be recorded and made available publicly. Parties interested in testifying must pre-register online prior to 1:00 pm on the date of the applicable hearing and are encouraged to also send written testimony to spedrule@tea.texas.gov. The hearing(s) will conclude once all who have registered have been given the opportunity to comment. Questions about the hearing should be directed to the Office of Special Populations at (512) 463-9414. 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 amendment is proposed under Texas Education Code (TEC), §7.028, which establishes compliance monitoring limitations with exceptions noted in particular for requirements in TEC, §28.006 and §38.003; TEC, §28.006, as amended by Senate Bill 2075, 86th Texas Legislature, 2019, which requires the commissioner to establish procedures by rule for monitoring compliance and provision of support to districts for complying with statutory requirements in the section; TEC, §38.003, which requires the commissioner to establish procedures by rule for monitoring compliance and provision of support to districts for complying with statutory requirements in the section; and TEC, §§39.056-39.058, which define and establish conduct of monitoring reviews and special accreditation investigations and require the commissioner to establish procedures by rule for complying with statutory requirements in the sections.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.028; 28.006, as amended by Senate Bill 2075, 86th Texas Legislature, 2019; 38.003, and 39.056-39.058.

§97.1071. Special Program Performance; Monitoring, Review, and Supports [~~Intervention Stages~~].

(a) School districts and open-enrollment charter schools are subject to general supervision and monitoring activities for compliance with state law and federal regulation and review of program implementation and effectiveness within certain special populations of students. Activities may include:

(1) random, targeted, or cyclical reviews authorized under Texas Education Code (TEC), §39.056, conducted remotely or on-site to identify problems implementing state and federal requirements and to provide support for development of reasonable and appropriate strategies to address identified problems; and/or

(2) intensive or special investigative remote or on-site reviews authorized under TEC, §39.057.

(b) Activities described in subsection (a) of this section are applicable for compliance with requirements for reading diagnosis in TEC, §28.006, and dyslexia and related disorders in TEC, §38.003, and §74.28 of this title (relating to Students with Dyslexia and Related Disorders).

(c) [~~(a)~~] The commissioner of education shall assign school districts, including open-enrollment charter schools, an annual determination level [~~a school district to an intervention stage~~] based on performance levels of certain special populations student groups under §97.1005 of this title (relating to Results Driven Accountability [~~Performance-Based Monitoring Analysis System~~]) according to the following general criteria:

(1) the degree to which the district's performance reflects a need for targeted or intensive supports [~~intervention~~], as indicated by the seriousness, number, extent, and duration of the student performance, program effectiveness, and/or program compliance deficiencies identified by the Texas Education Agency (TEA);

(2) a comparison of the district's performance relative to aggregated state performance and state performance standards[~~to the performance of other districts~~];

(3) a statistical distribution of [~~the availability of state and regional resources to intervene in all~~] districts exhibiting a comparable need for targeted support [~~intervention~~]; and

(4) the length of time the performance standard has been in place and the length of time the district has exhibited deficiencies under the standard.

(d) [~~(b)~~] In addition to performance levels determined under §97.1005 of this title, the commissioner may consider any other applicable information, such as:

(1) complaints investigation results;

(2) special education due process hearing decisions;

(3) data validation activities;

(4) integrity of assessment or financial data; [~~and~~]

(5) longitudinal intervention history; and [~~.~~]

(6) other federally required elements.

(e) [~~(c)~~] The standards used to assign districts to specific determination levels [~~intervention stages~~] under this section are established annually by the commissioner and communicated to all school districts. Determination level categories for assignment include:

(1) meets requirements;

(2) needs assistance;

(3) needs intervention; and

(4) needs substantial intervention.

(f) [~~(d)~~] In addition to determination levels described in subsections (c) and (e) of this section, the [~~The~~] commissioner may develop a system of cyclical monitoring to ensure every district participates in general supervision activities. Based on a district's assigned determination level, as part of its cyclical monitoring process, or as part of compliance monitoring activities, [~~use graduated stages of intervention to address student performance, program effectiveness, and/or data quality deficiencies referenced in §97.1005 of this title. In addition to any sanction authorized by Texas Education Code (TEC), Chapter 39, such intervention may require~~] a district may be required to implement and/or participate in:

(1) focused self-analysis [analysis] of district data and program effectiveness;

(2) focused remote and/or on-site review;

[(2) required district review of program effectiveness;]

(3) required stakeholder engagement[public meetings];

(4) focused compliance reviews[conducted by review teams established by the TEA];

[(5) on-site reviews; and/or]

(5) [(6)] strategic support and continuous improvement planning; and/or [.]

(6) corrective action plan development.

(g) [(e)] The commissioner shall notify in writing each district identified for review under this section as a result of assigned determination level or cyclical selection prior to requiring a district to implement or participate in any activities included in subsection (f)(1)-(6) of this section[selected for intervention under this section via the Intervention Stage and Activity Manager (ISAM) on the TEA secure website].

[(1) The TEA shall notify districts that intervention stages have been posted to ISAM by:]

[(A) posting a "To the Administrator Addressed" letter on the TEA web page for correspondence; or]

[(B) sending a "To the Administrator Addressed" letter via electronic mail or first-class mail.]

[(2) It is the district's obligation to access the correspondence by:]

[(A) subscribing to the listserv for "To the Administrator Addressed Correspondence;" and]

[(B) accessing the ISAM system as directed to retrieve intervention instructions and information.]

(h) [(f)] Actions [Intervention actions] taken under this section are intended to assist the district in raising its performance and/or achieving compliance under §97.1005 of this title, statutory requirements in TEC, §28.006 and §38.003, and §74.28 of this title and do not preclude or substitute for a sanction under another provision of this subchapter.

[(1) The level of intervention selected under this section does not reflect any decision on, or consideration of, the need for other sanctions.]

[(2) A decision to impose other sanctions shall be based on the accreditation and compliance performance of the district, as determined under §97.1057 of this title (relating to Interventions and Sanctions; Lowered Rating or Accreditation Status) and this subchapter, and not on the level of intervention chosen under this section.]

(i) [(g)] Actions [Intervention actions] taken under this section do not preclude or substitute for other responses to or consequences of program ineffectiveness or noncompliance identified by the TEA, such as:

(1) required fiscal audit of specific program(s) and/or of the district, paid for by the district;

(2) required submission of improvement and/or corrective action plan(s), including the provision of compensatory services as appropriate, paid for by the district;

(3) expanded oversight, including, but not limited to, frequent follow-up contacts with the district, submission of documentation verifying implementation of intervention activities and/or an improvement plan, [;] and submission of district/program data;

(4) public release of monitoring review findings;

(5) denial of requests under TEC, §7.056 and/or §12.114;

(6) reduction, suspension, redirection, or withholding of program funds;

(7) lowering of the special education determination level [monitoring status] of the district; and/or

(8) lowering of the district's accreditation status, academic accountability rating, and/or financial accountability rating.

[(h) As a system safeguard, the TEA will conduct desk review or on-site data verification activities through a random or other means of selection to verify system effectiveness and/or district implementation of monitoring requirements, including, but not limited to, accuracy of data reporting, implementation of intervention activities, implementation of plans for improvement or correction, and accuracy of findings made through the performance-based monitoring system process.]

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 September 21, 2020.

TRD-202003878
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.2

The Texas State Board of Pharmacy proposes amendments to §283.2, concerning Definitions. The amendments, if adopted, remove an outdated reference to a pharmacist intern-trainee, a designation that no longer exists.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clearer regulatory language that accurately reflects the current preceptor supervision duties. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not limit or expand an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§283.2. Definitions.

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

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Applicant--An individual having applied for licensure to act as a pharmacist in Texas.

(3) Approved continuing education--Continuing education which meets the requirements of §295.8 of this title (relating to Continuing Education Requirements).

(4) Board--The Texas State Board of Pharmacy; all members, divisions, departments, sections, and employees thereof.

(5) College/School of pharmacy--A college/school of pharmacy whose professional degree program has been approved by the board and is either accredited by:

(A) ACPE; or

(B) the Canadian Council for Accreditation of Pharmacy Programs for 1993 - 2004 graduates.

(6) Competency--A demonstrated state of preparedness for the realities of professional pharmacy practice.

(7) Didactic--Systematic classroom instruction.

(8) Direct supervision--A pharmacist preceptor or healthcare professional preceptor is physically present and on-site at the licensed location of the pharmacy where the pharmacist-intern is performing pharmacist-intern duties.

(9) Extended-intern--An intern, registered with the board, who has:

(A) applied to the board for licensure by examination and has successfully passed the NAPLEX and Texas Pharmacy Jurisprudence Examination but lacks the required number of hours of internship for licensure; or

(B) applied to the board to take the NAPLEX and Texas Pharmacy Jurisprudence Examinations within six calendar months after graduation and has either:

(i) graduated and received a professional degree from a college/school of pharmacy; or

(ii) completed all of the requirements for graduation and for receipt of a professional degree from a college/school of pharmacy; or

(C) applied to the board to take the NAPLEX and Texas Pharmacy Jurisprudence Examinations within six calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(D) applied to the Board for re-issuance of a pharmacist license which has been expired for more than two years but less than ten years and has successfully passed the Texas Pharmacy Jurisprudence Examination, but lacks the required number of hours of internship or continuing education required for licensure; or

(E) been ordered by the Board to complete an internship.

(10) Foreign pharmacy graduate--An individual whose pharmacy degree was conferred by a pharmacy school whose professional degree program has not been accredited by ACPE and approved by the board. An individual whose pharmacy degree was conferred by a pharmacy school that was accredited by the Canadian Council for Accreditation of Pharmacy Programs between 1993 and 2004, inclusively, is not considered a foreign pharmacy graduate.

(11) FPGEC--The Foreign Pharmacy Graduate Equivalency Commission.

(12) Healthcare Professional--An individual licensed as:

(A) a physician, dentist, podiatrist, veterinarian, advanced practice registered nurse, or physician assistant in Texas or another state; or

(B) a pharmacist in a state other than Texas but not licensed in Texas.

(13) Healthcare Professional Preceptor--A healthcare professional serving as an instructor for a Texas college/school-based internship program who is recognized by a Texas college/school of pharmacy to supervise and be responsible for the activities and functions of a student-intern [~~or intern-trainee~~] in the internship program.

(14) Internship--A practical experience program that is approved by the board.

(15) MPJE--Multistate Pharmacy Jurisprudence Examination.

(16) NABP--The National Association of Boards of Pharmacy.

(17) NAPLEX--The North American Pharmacy Licensing Examination, or its predecessor, the National Association of Boards of Pharmacy Licensing Examination.

(18) Pharmaceutical care--The provision of drug therapy and other pharmaceutical services defined in the rules of the board and intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(19) Pharmacist-intern--A student-intern, a resident-intern, or an extended-intern who is participating in a board approved internship program.

(20) Pharmacist Preceptor--A pharmacist licensed in Texas to practice pharmacy who meets the requirements under board rules and is recognized by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in an internship program.

(21) Resident-intern--An individual who is registered with the board and:

(A) has graduated from a college/school of pharmacy; and

(B) is completing a residency program in the state of Texas accredited by the American Society of Health-System Pharmacists.

(22) Preceptor--A pharmacist preceptor or a healthcare professional preceptor.

(23) Professional degree--A bachelor of science degree in pharmacy or a doctorate of pharmacy degree.

(24) State--One of the 50 United States of America, the District of Columbia, and Puerto Rico.

(25) Student-intern--An individual registered with the board who is enrolled in the professional sequence of a college/school of pharmacy and is participating in a board-approved internship program.

(26) Texas Pharmacy Jurisprudence Examination--A licensing exam developed or approved by the Board which evaluates an applicant's knowledge of the drug and pharmacy requirements to practice pharmacy legally in the state of Texas.

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 September 14, 2020.

TRD-202003755
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-8010

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22 TAC §283.4

The Texas State Board of Pharmacy proposes amendments to §283.4, concerning Internship Requirements. The amendments, if adopted, will remove outdated references to a change of name fee and requirements to reflect current procedures.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clearer regulatory language that accurately reflects the current process for pharmacist-interns to notify the Board of a change of name. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed rule will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do require a decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation by removing an outdated fee and requirement;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 29, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§283.4. Internship Requirements.

(a) Goals and competency objectives of internship.

(1) The goal of internship is for the pharmacist-intern to attain the knowledge, skills, and abilities to safely, efficiently, and effectively provide pharmacist-delivered patient care to a diverse patient population and practice pharmacy under the laws and regulations of the State of Texas.

(2) The following competency objectives are necessary to accomplish the goal of internship in paragraph (1) of this subsection:

(A) Provides drug products. The pharmacist-intern shall demonstrate competence in determining the appropriateness of prescription drug orders and medication orders; evaluating and selecting products; and assuring the accuracy of the product/prescription dispensing process.

(B) Communicates with patients and/or patients' agents about prescription drugs. The pharmacist-intern shall demonstrate competence in interviewing and counseling patients, and/or the patients' agents, on drug usage, dosage, packaging, routes of administration, intended drug use, and storage; discussing drug cautions, adverse effects, and patient conditions; explaining policies on fees and services; relating to patients in a professional manner; and interacting to confirm patient understanding.

(C) Communicates with patients and/or patients' agents about nonprescription products, devices, dietary supplements, diet, nutrition, traditional nondrug therapies, complementary and alternative therapies, and diagnostic aids. The pharmacist-intern shall demonstrate competence in interviewing and counseling patients and/or patients' agents on conditions, intended drug use, and adverse effects; assisting in and recommending drug selection; triaging and assessing the need for treatment or referral, including referral for a patient seeking pharmacist-guided self-care; providing information on medical/surgical devices and home diagnostic products; and providing poison control treatment information and referral.

(D) Communicates with healthcare professionals and patients and/or patients' agents. The pharmacist-intern shall demonstrate competence in obtaining and providing accurate and concise information in a professional manner and using appropriate oral, written, and nonverbal language.

(E) Practices as a member of the patient's interdisciplinary healthcare team. The pharmacist-intern shall demonstrate competence in collaborating with physicians, other healthcare professionals, patients, and/or patients' agents to formulate a therapeutic plan. The pharmacist-intern shall demonstrate competence in establishing and interpreting databases, identifying drug-related problems and recommending appropriate pharmacotherapy specific to patient needs, monitoring and evaluating patient outcomes, and devising follow-up plans.

(F) Maintains professional-ethical standards. The pharmacist-intern is required to comply with laws and regulations pertaining to pharmacy practice; to apply professional judgment; to exhibit reliability and credibility in dealing with others; to deal professionally and ethically with colleagues and patients; to demonstrate sensitivity and empathy for patients/care givers; and to maintain confidentiality.

(G) Compounds. The pharmacist-intern shall demonstrate competence in using acceptable professional procedures; selecting appropriate equipment and containers; appropriately preparing compounded non-sterile and sterile preparations; and documenting calculations and procedures. Pharmacist-interns engaged in compounding non-sterile preparations shall meet the training requirements for pharmacists specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations). Pharmacist-interns engaged in compounding sterile preparations shall meet the training requirements for pharmacists specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(H) Retrieves and evaluates drug information. The pharmacist-intern shall demonstrate competence in retrieving, evaluating, managing, and using the best available clinical and scientific publications for answering a drug-related request in a timely fashion and assessing, evaluating, and applying evidence based information to promote optimal health care. The pharmacist-intern shall perform investigations on relevant topics in order to promote inquiry and problem-solving with dissemination of findings to the healthcare community and/or the public.

(I) Manages general pharmacy operations. The pharmacist-intern shall develop a general understanding of planning, personnel and fiscal management, leadership skills, and policy development. The pharmacist-intern shall have an understanding of drug security, storage and control procedures and the regulatory requirements associated with these procedures, and maintaining quality assurance and performance improvement. The pharmacist-intern shall observe and document discrepancies and irregularities, keep accurate records and document actions. The pharmacist-intern shall attend meetings requiring pharmacy representation.

(J) Participates in public health, community service or professional activities. The pharmacist-intern shall develop basic knowledge and skills needed to become an effective healthcare educator and a responsible participant in civic and professional organizations.

(K) Demonstrates scientific inquiry. The pharmacist-intern shall develop skills to expand and/or refine knowledge in the areas of pharmaceutical and medical sciences or pharmaceutical services. This may include data analysis of scientific, clinical, sociological, and/or economic impacts of pharmaceuticals (including investigational drugs), pharmaceutical care, and patient behaviors, with dissemination of findings to the scientific community and/or the public.

(b) Hours requirement.

(1) The board requires 1,500 hours of internship for licensure. These hours may be obtained through one or more of the following methods:

(A) in a board approved student internship program, as specified in subsection (c) of this section;

(B) in a board-approved extended-internship program as specified in subsection (d) of this section; and/or

(C) graduation from a college/school of pharmacy after July 1, 2007. Persons graduating from such programs shall be credited 1,500 hours or the number of hours actually obtained and reported by the college; and/or

(D) internship hours approved and certified to the board by another state board of pharmacy.

(2) Pharmacist-interns participating in an internship may be credited no more than 50 hours per week of internship experience.

(3) Internship hours may be used for the purpose of licensure for no longer than two years from the date the internship is completed.

(c) College-/School-Based Internship Programs.

(1) Internship experience acquired by student-interns.

(A) An individual may be designated a student-intern provided he/she:

(i) submits an application to the board that includes the following information:

(I) name;

(II) addresses, phone numbers, date of birth, and social security number;

(III) college of pharmacy and expected graduation date; and

(IV) any other information requested on the application;

(ii) is enrolled in the professional sequence of a college/school of pharmacy; and

(iii) has met all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(B) The terms of the student internship shall be as follows.

(i) The student internship shall be gained concurrent with college attendance, which may include:

(I) partial semester breaks such as spring breaks;

(II) between semester breaks; and

(III) whole semester breaks provided the student-intern attended the college/school in the immediate preceding semester and is scheduled with the college/school to attend in the immediate subsequent semester.

(ii) The student internship shall be obtained in pharmacies licensed by the board, federal government pharmacies, or in a board-approved program.

(iii) The student internship shall be in the presence of and under the supervision of a healthcare professional preceptor or a pharmacist preceptor.

(C) None of the internship hours acquired outside of a school-based program may be substituted for any of the hours required in a college/school of pharmacy internship program.

(2) Expiration date for student-intern designation.

(A) The student-internship expires:

(i) if the student-intern voluntarily or involuntarily ceases enrollment, including suspension, in a college/school of pharmacy;

(ii) the student-intern fails either the NAPLEX or Texas Pharmacy Jurisprudence Examinations specified in this section; or

(iii) the student-intern fails to take either the NAPLEX or Texas Pharmacy Jurisprudence Examinations or both within six calendar months after graduation.

(B) The executive director of the board, in his/her discretion, may extend the term of the student internship if administration of the NAPLEX or Texas Pharmacy Jurisprudence Examinations is suspended or delayed.

(3) Texas colleges/schools of pharmacy internship programs.

(A) Student-interns completing a board-approved Texas college/school-based structured internship shall be credited the number of hours actually obtained and reported by the college. No credit shall be awarded for didactic experience.

(B) No more than 600 hours of the required 1,500 hours may be obtained under a healthcare professional preceptor except when a pharmacist-intern is working in a federal government pharmacy.

(d) Extended-internship program.

(1) A person may be designated an extended-intern provided he/she has met one of the following requirements:

(A) passed NAPLEX and the Texas Pharmacy Jurisprudence Examinations but lacks the required number of internship hours for licensure;

(B) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within six calendar months after graduation and has:

(i) graduated and received a professional degree from a college/school of pharmacy; or

(ii) completed all of the requirements for graduation and receipt of a professional degree from a college/school of pharmacy;

(C) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within six calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission;

(D) applied to the board for re-issuance of a pharmacist license which has expired for more than two years but less than ten years and has successfully passed the Texas Pharmacy Jurisprudence Examination, but lacks the required number of hours of internship or continuing education required for licensure;

(E) is a resident in a residency program accredited by the American Society of Health-System Pharmacists in the state of Texas; or

(F) been ordered by the Board to complete an internship.

(2) In addition to meeting one of the requirements in paragraph (1) of this subsection, an applicant for an extended-internship must:

(A) submit an application to the board that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number;

(iii) any other information requested on the application; and

(B) meet all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(3) The terms of the extended-internship shall be as follows.

(A) The extended-internship shall be board-approved and gained in a pharmacy licensed by the board, or a federal government pharmacy participating in a board-approved internship program.

(B) The extended-internship shall be in the presence of and under the direct supervision of a pharmacist preceptor.

(4) The extended internship remains in effect for two years. However, the internship expires immediately upon:

(A) the failure of the extended-intern to take the NAPLEX and Texas Pharmacy Jurisprudence Examinations within six calendar months after graduation or FPGEC certification;

(B) the failure of the extended-intern to pass the NAPLEX and Texas Pharmacy Jurisprudence Examinations specified in this section;

(C) upon termination of the residency program; or

(D) obtaining a Texas pharmacist license.

(5) The executive director of the board, in his/her discretion, may extend the term of the extended internship if administration of the NAPLEX and/or Texas Pharmacy Jurisprudence Examinations is suspended or delayed.

(6) An applicant for licensure who has completed less than 500 hours of internship at the time of application shall complete the remainder of the 1,500 hours of internship and have the preceptor certify that the applicant has met the objectives listed in subsection (a) of this section.

(e) Pharmacist-intern identification.

(1) Pharmacist-interns shall keep documentation of designation as a pharmacist-intern with them at all times they are serving as a pharmacist-intern and make it available for inspection by board agents.

(2) All pharmacist-interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist-intern.

(f) Change of address and/or name.

(1) Change of address. A pharmacist-intern shall notify the board electronically or in writing within 10 days of a change of address, giving the old and new address.

(2) Change of name. A pharmacist-intern shall notify the board in writing within 10 days of a change of name by[~~:~~]

[~~(A)~~] sending a copy of the official document reflecting the name change (e.g., marriage certificate, divorce decree, etc.).[~~;~~

[~~(B) returning the current pharmacist-intern certificate which reflects the previous name; and~~]

[~~(C) paying a fee of $20.~~]

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 September 14, 2020.

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-8010

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22 TAC §283.5

The Texas State Board of Pharmacy proposes amendments to §283.5, concerning Pharmacist-Intern Duties. The amendments, if adopted, remove the ratio of pharmacists to pharmacist-interns and correct a grammatical error.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide more flexibility in the staffing of pharmacist-interns performing pharmacy technician duties to better serve the needs of the pharmacy's patients. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§283.5. Pharmacist-Intern Duties.

(a) A pharmacist-intern participating in a board-approved internship program may perform any duty of a pharmacist provided the duties are delegated by and under the supervision of:

(1) a pharmacist licensed by the board and approved as a preceptor by the board; or

(2) a healthcare professional preceptor.

(b) When not under the supervision of a pharmacist preceptor, a pharmacist-intern may function as a pharmacy technician and perform all of the duties of a pharmacy technician without registering as a pharmacy technician provided the pharmacist-intern:

(1) is registered with the board as a pharmacist-intern;

(2) is under the direct supervision of a pharmacist;

(3) has completed the pharmacy's on-site technician training program;

(4) has completed the training required for pharmacists in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations) if the pharmacist-intern is involved in compounding sterile preparations; and

(5) is not counted as a pharmacy technician in the ratio of pharmacists to pharmacy technicians. [~~The ratio of pharmacists to pharmacist-interns shall be 1:1 when performing pharmacy technician duties.~~]

(c) A pharmacist-intern may not:

(1) present or identify himself/herself as a pharmacist;

(2) sign or initial any document which is required to be signed or initialed by a pharmacist unless a preceptor cosigns the document; or

(3) independently supervise pharmacy technicians or pharmacy technician trainees.

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 September 14, 2020.

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-8010

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22 TAC §283.11

The Texas State Board of Pharmacy proposes amendments to §283.11, concerning Examination Retake Requirements. The amendments, if adopted, clarify the course work requirements for reciprocity applicants retaking the Texas Pharmacy Jurisprudence Examination as only those provided for under Section 558.055 of the Texas Pharmacy Act.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding required course work for reciprocity applicants retaking the Texas Pharmacy Jurisprudence Examination. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not limit or expand an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§283.11. Examination Retake Requirements.

(a) Licensing by examination. Should an applicant fail to achieve the minimum grade on the NAPLEX or Texas Pharmacy Jurisprudence Examination or both, the following is applicable.

(1) If the applicant fails to achieve the minimum grade on NAPLEX as specified in §283.7 of this title (relating to Examination Requirements), the applicant may retake NAPLEX four additional times for a total of five exam administrations. Prior to any subsequent retakes of NAPLEX, the applicant must:

(A) complete course work in subject areas recommended by the board;

(B) submit documentation to the board which specifies that the applicant has successfully completed the course work specified; and

(C) comply with the requirements of §283.7 of this title (relating to Examination Requirements).

(2) If the applicant fails to achieve the minimum grade on the Texas Pharmacy Jurisprudence Examination as specified in §283.7 of this title (relating to Examination Requirements), the applicant may retake the examination four additional times for a total of five exam administrations. Prior to any subsequent retake of the Texas Pharmacy Jurisprudence Examination, the applicant must:

(A) complete course work recommended by the board;

(B) submit documentation to the board which specifies that the applicant has successfully completed the recommended course work; and

(C) comply with the requirements of §283.7 of this title (relating to Examination Requirements).

(3) If the applicant fails to achieve the minimum grade on both NAPLEX and the Texas Pharmacy Jurisprudence Examination, the applicant shall retake the examinations until a passing grade is achieved on one of the examinations. Such retakes shall be as specified in paragraphs (1) and (2) of this subsection.

(b) Licensing by reciprocity. If an applicant fails to achieve the minimum grade on the Texas Pharmacy Jurisprudence Examination as specified in §283.8 of this title (relating to Reciprocity Requirements), the applicant may retake the examination four additional times for a total of five exam administrations. Prior to any subsequent retake of the Texas Pharmacy Jurisprudence Examination, the applicant must:

(1) complete course work recommended by the board;

(2) submit documentation to the board which specifies that the applicant has successfully completed the recommended course work; and

(3) comply with the requirements of §283.8 of this title (relating to Reciprocity Requirements).

(c) Course work. For the purpose of this subsection, course work shall be[~~:~~]

[~~(1)~~] one or more standard courses or self-paced work offered in a college of pharmacy's academic program. [~~;~~

[~~(2) one or more courses presented by a board-approved provider of continuing pharmacy education as specified in §295.8 of this title (relating to Continuing Education Requirements); or~~]

[~~(3) any course specified by the board.~~]

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

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
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For further information, please call: (512) 305-8010

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES
22 TAC §291.1

The Texas State Board of Pharmacy proposes amendments to §291.1 concerning Pharmacy License Application. The amendments, if adopted, add a requirement for each non-pharmacist individual owner or managing officer of a Class A pharmacy license applicant to attend a pharmacy ownership training course.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to improve awareness and education amongst non-pharmacist individual owners and managing officers with the requirements of pharmacy ownership. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do expand an existing regulation by adding a training requirement;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.1. Pharmacy License Application.

(a) To qualify for a pharmacy license, the applicant must submit an application which includes any information requested on the application and, as required by §560.052(b) of the Act, a sworn disclosure statement as specified in §291.4 of this title (relating to Sworn Disclosure Statement).

(b) The applicant may be required to meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs. The criminal history information may be required for each individual owner, or if the pharmacy is owned by a partnership or a closely held corporation for each managing officer.

(c) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance of a pharmacy license.

(d) For purpose of this section, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(e) Prior to the issuance of a license for a pharmacy located in Texas, the board shall conduct an on-site inspection of the pharmacy in the presence of the pharmacist-in-charge and owner or representative of the owner, to ensure that the pharmacist-in-charge and owner can meet the requirements of the Texas Pharmacy Act and Board Rules.

(f) If the applicant holds an active pharmacy license in Texas on the date of application for a new pharmacy license or for other good cause shown as specified by the board, the board may waive the pre-inspection as set forth in subsection (e) of this section.

(g) Effective January 1, 2021, prior to the issuance of a license for a Class A pharmacy, if not licensed as a Texas pharmacist, each individual owner or managing officer must submit proof of attendance for a pharmacy ownership training course approved by the board, unless:

(1) the pharmacy for which the application is made is operated by a publicly traded company; or

(2) the pharmacy for which the application is made is wholly owned by a retail grocery store chain.

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

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Executive Director
Texas State Board of Pharmacy
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22 TAC §291.3

The Texas State Board of Pharmacy proposes amendments to §291.3 concerning Required Notifications. The amendments, if adopted, add a requirement for each non-pharmacist individual owner or managing officer of a Class A pharmacy to attend a pharmacy ownership training course within 90 days of notifying the board of a change of managing officer, clarify the change of ownership notification requirements, and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to improve awareness and education amongst non-pharmacist individual owners and managing officers with the requirements of pharmacy ownership. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do expand an existing regulation by adding a training requirement;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.3. Required Notifications.

(a) Change of Location.

(1) When a pharmacy changes location, the following is applicable:

(A) A new completed pharmacy application containing the information outlined in §291.1 of this title (relating to Pharmacy License Application), must be filed with the board not later than 30 days before the date of the change of location of the pharmacy.

(B) The previously issued license must be returned to the board office.

(C) An amended license reflecting the new location of the pharmacy will be issued by the board; and

(D) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance of the amended license.

(2) At least 14 days prior to the change of location of a pharmacy that dispenses prescription drug orders, the pharmacist-in-charge shall post a sign in a conspicuous place indicating that the pharmacy is changing locations. Such sign shall be in the front of the pre-

scription department and at all public entrance doors to the pharmacy and shall indicate the date the pharmacy is changing locations.

(3) Disasters, accidents, and emergencies which require the pharmacy to change location shall be immediately reported to the board. If a pharmacy changes location suddenly due to disasters, accidents, or other emergency circumstances and the pharmacist-in-charge cannot provide notification 14 days prior to the change of location, the pharmacist-in-charge shall comply with the provisions of paragraph (2) of this subsection as far in advance of the change of location as allowed by the circumstances.

(4) When a Class A-S, C-S, or E-S pharmacy changes location, the pharmacy's classification will revert to a Class A, Class C, or Class E unless or until the Board or its designee has inspected the new location to ensure the pharmacy meets the requirements as specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(5) When a Class B pharmacy changes location, the Board shall inspect the pharmacy at the new location to ensure the pharmacy meets the requirements as specified in subchapter C of this title (relating to Nuclear Pharmacy (Class B)) prior to the pharmacy becoming operational.

(b) Change of Name. When a pharmacy changes its name, the following is applicable:

(1) A new completed pharmacy application containing the information outlined in §291.1 of this title [~~(relating to Pharmacy License Application)~~] must be filed with the board within 10 days of the change of name of the pharmacy;

(2) The previously issued license must be returned to the board office;

(3) An amended license reflecting the new name of the pharmacy will be issued by the board; and

(4) A fee as specified in §291.6 of this title [~~(relating to Pharmacy License Fees)~~] will be charged for issuance of the amended license.

(c) Change of Managing Officers.

(1) The owner of a pharmacy shall notify the board in writing within 10 days of a change of any managing officer of a partnership or corporation which owns a pharmacy. The written notification shall include the effective date of such change and the following information for all managing officers:

(A) name and title;

(B) home address and telephone number;

(C) date of birth;

(D) a copy of social security card or other official document showing the social security number as approved by the board; and

(E) a copy of current driver's license, state issued photo identification card, or passport.

(2) For purposes of this subsection, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(3) Effective January 1, 2021, for each Class A pharmacy, if not licensed as a Texas pharmacist, each individual owner or managing officer must submit proof of attendance for a pharmacy ownership training course approved by the board within 90 days of the notification submitted under paragraph (1) of this subsection, unless:

(A) the pharmacy for which the notification is submitted is operated by a publicly traded company; or

(B) the pharmacy for which the notification is submitted is wholly owned by a retail grocery store chain.

(d) Change of Ownership.

(1) When a pharmacy changes ownership, a new pharmacy application must be filed with the board following the procedures as specified in §291.1 of this title [~~(relating to Pharmacy License Application)~~] within 10 days of the change of ownership. [~~In addition, a copy of the purchase contract or mutual agreement between the buyer and seller must be submitted.~~]

(2) The license issued to the previous owner must be returned to the board.

(3) A fee as specified in §291.6 of this title will be charged for issuance of a new license.

(e) Change of Pharmacist Employment.

(1) Change of pharmacist employed in a pharmacy. When a change in pharmacist employment occurs, the pharmacist shall report such change in writing to the board within 10 days.

(2) Change of pharmacist-in-charge of a pharmacy. The incoming pharmacist-in-charge shall be responsible for notifying the board within 10 days in writing on a form provided by the board that a change of pharmacist-in-charge has occurred. The notification shall include the following:

(A) the name and license number of the departing pharmacist-in-charge;

(B) the name and license number of the incoming pharmacist-in-charge;

(C) the date the incoming pharmacist-in-charge became the pharmacist-in-charge; and

(D) a statement signed by the incoming pharmacist-in-charge attesting that:

(i) an inventory, as specified in §291.17 of this title (relating to Inventory Requirements), has been conducted by the departing and incoming pharmacists-in-charge; if the inventory was not taken by both pharmacists, the statement shall provide an explanation; and

(ii) the incoming pharmacist-in-charge has read and understands the laws and rules relating to this class of pharmacy.

(f) Notification of Theft or Loss of a Controlled Substance or a Dangerous Drug.

(1) Controlled substances. For the purposes of the Act, §562.106, the theft or significant loss of any controlled substance by a pharmacy shall be reported in writing to the board immediately on discovery of such theft or loss. A pharmacy shall be in compliance with this subsection by submitting to the board a copy of the Drug Enforcement Administration (DEA) report of theft or loss of controlled substances, DEA Form 106, or by submitting a list of all controlled substances stolen or lost.

(2) Dangerous drugs. A pharmacy shall report in writing to the board immediately on discovery the theft or significant loss of any dangerous drug by submitting a list of the name and quantity of all dangerous drugs stolen or lost.

(g) Fire or Other Disaster. If a pharmacy experiences a fire or other disaster, the following requirements are applicable.

(1) Responsibilities of the pharmacist-in-charge.

(A) The pharmacist-in-charge shall be responsible for reporting the date of the fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of the injury, illness, and disease; such notification shall be reported to the board, within 10 days from the date of the disaster.

(B) The pharmacist-in-charge or designated agent shall comply with the following procedures.

(i) If controlled substances, dangerous drugs, or Drug Enforcement Administration (DEA) order forms are lost or destroyed in the disaster, the pharmacy shall:

(I) notify the DEA and the board of the loss of the controlled substances or order forms immediately upon discovery; and

(II) notify the board in writing of the loss of the dangerous drugs by submitting a list of the dangerous drugs lost.

(ii) If the extent of the loss of controlled substances or dangerous drugs is not able to be determined, the pharmacy shall:

(I) take a new, complete inventory of all remaining drugs specified in §291.17(c) of this title (relating to Inventory Requirements);

(II) submit to DEA a statement attesting that the loss of controlled substances is indeterminable and that a new, complete inventory of all remaining controlled substances was conducted and state the date of such inventory; and

(III) submit to the board a statement attesting that the loss of controlled substances and dangerous drugs is indeterminable and that a new, complete inventory of the drugs specified in §291.17(c) of this title was conducted and state the date of such inventory.

(C) If the pharmacy changes to a new, permanent location, the pharmacist-in-charge shall comply with subsection (a) of this section.

(D) If the pharmacy moves to a temporary location, the pharmacist shall comply with subsection (a) of this section. If the pharmacy returns to the original location, the pharmacist-in-charge shall again comply with subsection (a) of this section.

(E) If the pharmacy closes due to fire or other disaster, the pharmacy may not be closed for longer than 90 days [~~as specified in §291.11 of this title (relating to Operation of a Pharmacy)~~].

(F) If the pharmacy discontinues business (ceases to operate as a pharmacy), the pharmacist-in-charge shall comply with §291.5 of this title (relating to Closing a Pharmacy).

(G) The pharmacist-in-charge shall maintain copies of all inventories, reports, or notifications required by this section for a period of two years.

(2) Drug stock.

(A) Any drug which has been exposed to excessive heat, smoke, or other conditions which may have caused deterioration shall not be dispensed.

(B) Any potentially adulterated or damaged drug shall only be sold, transferred, or otherwise distributed pursuant to the provisions of the Texas Food Drug and Cosmetics Act (Chapter 431, Health and Safety Code) administered by the Bureau of Food and Drug Safety of the Texas Department of State Health Services.

(h) Notification to Consumers.

(1) Pharmacy.

(A) Every licensed pharmacy shall provide notification to consumers of the name, mailing address, Internet site address, and telephone number of the board for the purpose of directing complaints concerning the practice of pharmacy to the board. Such notification shall be provided as follows.

(i) If the pharmacy serves walk-in customers, the pharmacy shall either:

(I) post in a prominent place that is in clear public view where prescription drugs are dispensed:

(-a-) a sign which notifies the consumer that complaints concerning the practice of pharmacy may be filed with the board and list the board's name, mailing address, Internet site address, telephone number, and a toll-free telephone number for filing complaints; or

(-b-) an electronic messaging system in a type size no smaller than ten-point Times Roman which notifies the consumer that complaints concerning the practice of pharmacy may be filed with the board and list the board's name, mailing address, Internet site address, telephone number, and a toll-free number for filing complaints; or

(II) provide with each dispensed prescription a written notification in a type size no smaller than ten-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, Internet site address, telephone number of the board, and a toll-free telephone number for filing complaints)."

(ii) If the prescription drug order is delivered to patients at their residence or other designated location, the pharmacy shall provide with each dispensed prescription a written notification in type size no smaller than ten-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, Internet site address, telephone number, and a toll-free telephone number for filing complaints)." If multiple prescriptions are delivered to the same location, only one such notice shall be required.

(iii) The provisions of this subsection do not apply to prescriptions for patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(B) A pharmacy that maintains a generally accessible site on the Internet that is located in Texas or sells or distributes drugs through this site to residents of this state shall post the following information on the pharmacy's initial home page and on the page where a sale of prescription drugs occurs.

(i) Information on the ownership of the pharmacy, to include at a minimum, the:

(I) owner's name or if the owner is a partnership or corporation, the partnership's or corporation's name and the name of the chief operating officer;

(II) owner's address;

(III) owner's telephone number; and

(IV) year the owner began operating pharmacies in the United States.

(ii) The Internet address and toll free telephone number that a consumer may use to:

(I) report medication/device problems to the pharmacy; and

(II) report business compliance problems.

(iii) Information about each pharmacy that dispenses prescriptions for this site, to include at a minimum, the:

(I) pharmacy's name, address, and telephone number;

(II) name of the pharmacist responsible for operation of the pharmacy;

(III) Texas pharmacy license number for the pharmacy and a link to the Internet site maintained by the Texas State Board of Pharmacy; and

(IV) the names of all other states in which the pharmacy is licensed, the license number in that state, and a link to the Internet site of the entity that regulates pharmacies in that state, if available.

(C) A pharmacy whose Internet site has been verified by the National Association of Boards of Pharmacy to be in compliance with the laws of this state, as well as in all other states in which the pharmacy is licensed shall be in compliance with subparagraph (B) of this paragraph.

(2) Texas State Board of Pharmacy. On or before January 1, 2005, the board shall establish a pharmacy profile system as specified in §2054.2606, Government Code.

(A) The board shall make the pharmacy profiles available to the public on the agency's Internet site.

(B) A pharmacy profile shall contain at least the following information:

(i) name, address, and telephone number of the pharmacy;

(ii) pharmacy license number, licensure status, and expiration date of the license;

(iii) the class and type of the pharmacy;

(iv) ownership information for the pharmacy;

(v) names and license numbers of all pharmacists working at the pharmacy;

(vi) whether the pharmacy has had prior disciplinary action by the board;

(vii) whether the pharmacy's consumer service areas are accessible to disabled persons, as defined by law;

(viii) the type of language translating services, including translating services for persons with impairment of hearing, that the pharmacy provides for consumers; and

(ix) insurance information including whether the pharmacy participates in the state Medicaid program.

(C) The board shall gather this information on initial licensing and update the information in conjunction with the license renewal for the pharmacy.

(i) Notification of Licensees or Registrants Obtaining Controlled Substances or Dangerous Drugs by Forged Prescriptions. If a licensee or registrant obtains controlled substances or dangerous drugs from a pharmacy by means of a forged prescription, the pharmacy shall report in writing to the board immediately on discovery of such forgery. A pharmacy shall be in compliance with this subsection by submitting to the board the following:

(1) name of licensee or registrant obtaining controlled substances or dangerous drugs by forged prescription;

(2) date(s) of forged prescription(s);

(3) name(s) and amount(s) of drug(s); and

(4) copies of forged prescriptions.

(j) Notification of Disciplinary Action. For the purpose of the Act, §562.106, a pharmacy shall report in writing to the board not later than the 10th day after the date of:

(1) a final order against the pharmacy license holder by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is located in another state; or

(2) a final order against a pharmacist who is designated as the pharmacist-in-charge of the pharmacy by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is located in another state.

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

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Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-8010

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.31

The Texas State Board of Pharmacy proposes amendments to §291.31, concerning Definitions. The amendments, if adopted, update the definition of original prescription and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear and grammatically correct regulatory language. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not limit or expand an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 29, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.31. Definitions.

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

(1) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Chapter 562 of the Texas Pharmacy Act.

(2) Act--The Texas Pharmacy Act, Chapters 551 - 569, Occupations Code, as amended.

(3) Advanced practice registered nurse--A registered nurse licensed by the Texas Board of Nursing to practice as an advanced practice registered nurse on the basis of completion of an advanced education program. The term includes nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with advanced nurse practitioner and advanced practice nurse.

(4) Automated checking device--A device that confirms that the correct drug and strength has been labeled with the correct label for the correct patient prior to delivery of the drug to the patient.

(5) Automated counting device--An automated device that is loaded with bulk drugs and counts and/or packages (i.e., fills a vial or other container) a specified quantity of dosage units of a designated drug product.

(6) Automated pharmacy dispensing system--A system that automatically performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, and labeling for dispensing and delivery of medications, and that collects, controls, and maintains all transaction information. "Automated pharmacy dispensing system" does not mean "Automated compounding or counting device" or "Automated medication supply device."

(7) Beyond use date--The date beyond which a product should not be used.

(8) Board--The Texas State Board of Pharmacy.

(9) Confidential record--Any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication order.

(10) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended (Chapter 481, Health and Safety Code), or a drug, immediate precursor, or other substance included in Schedules I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(11) Dangerous drug--A drug or device that:

(A) is not included in Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, (Chapter 481, Health and Safety Code), and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(12) Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(13) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(14) Designated agent--

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner to communicate prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order;

(C) an advanced practice registered nurse or physician assistant authorized by a practitioner to prescribe or order drugs or devices under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code); or

(D) a person who is a licensed vocational nurse or has an education equivalent to or greater than that required for a licensed vocational nurse designated by the practitioner to communicate prescriptions for an advanced practice registered nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code).

(15) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(16) Dispensing error--An action committed by a pharmacist or other pharmacy personnel that causes the patient or patient's agent to take possession of a dispensed prescription drug and an individual subsequently discovers that the patient has received an incorrect drug product, which includes incorrect strength, incorrect dosage form, and/or incorrect directions for use.

(17) Dispensing pharmacist--The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(18) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(19) Downtime--Period of time during which a data processing system is not operable.

(20) Drug regimen review--An evaluation of prescription drug orders and patient medication records for:

(A) known allergies;

(B) rational therapy-contraindications;

(C) reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) drug-drug interactions;

(G) drug-food interactions;

(H) drug-disease interactions;

(I) adverse drug reactions; and

(J) proper utilization, including overutilization or underutilization.

(21) Electronic prescription drug order--A prescription drug order that is generated on an electronic application and transmitted as an electronic data file.

(22) Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(23) Electronic verification process--an electronic verification, bar code verification, weight verification, radio frequency identification (RFID), or similar electronic process or system that accurately verifies that medication has been properly dispensed and labeled by, or loaded into, an automated pharmacy dispensing system.

(24) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(25) Hard copy--A physical document that is readable without the use of a special device.

(26) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(27) Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(28) Medication order--A written order from a practitioner or an oral [~~a verbal~~] order from a practitioner or his authorized agent for administration of a drug or device.

(29) New prescription drug order--A prescription drug order that has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year.

(30) Original prescription--The:

(A) original written prescription drug order; or

(B) original oral [~~verbal~~] or electronic prescription drug order reduced to writing either manually or electronically [~~by the pharmacist~~].

(31) Part-time pharmacist--A pharmacist who works less than full-time.

(32) Patient counseling--Communication by the pharmacist of information to the patient or patient's agent in order to improve therapy by ensuring proper use of drugs and devices.

(33) Patient med-pak--A package prepared by a pharmacist for a specific patient comprised of a series of containers and containing two or more prescribed solid oral dosage forms. The patient med-pak is so designed or each container is so labeled as to indicate the day and time, or period of time, that the contents within each container are to be taken.

(34) Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(35) Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(36) Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(37) Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(38) Physician assistant--A physician assistant recognized by the Texas Medical Board as having the specialized education and training required under Subtitle B, Chapter 157, Occupations Code, and issued an identification number by the Texas Medical Board.

(39) Practitioner--

(A) a person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course

of professional practice in this state, including a physician, dentist, podiatrist, or veterinarian but excluding a person licensed under this Act;

(B) a person licensed by another state, Canada, or the United Mexican States in a health field in which, under the law of this state, a license holder in this state may legally prescribe a dangerous drug;

(C) a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number and who may legally prescribe a Schedule II, III, IV, or V controlled substance, as specified under Chapter 481, Health and Safety Code, in that other state; or

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order drugs or devices under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code) or, for the purpose of this subchapter, a pharmacist who practices in a hospital, hospital-based clinic, or an academic health care institution and to whom a physician has delegated the authority to sign a prescription for a dangerous drug under §157.101, Occupations Code.

(40) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container, unit-dose packaging, or multi-compartment container for dispensing by a pharmacist to the ultimate consumer, including dispensing through the use of an automated pharmacy dispensing system or automated checking device.

(41) Prescription department--The area of a pharmacy that contains prescription drugs.

(42) Prescription drug--

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

(43) Prescription drug order--

(A) a written order from a practitioner or an oral [~~a verbal~~] order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or an oral [~~a verbal~~] order pursuant to Subtitle B, Chapter 157, Occupations Code.

(44) Prospective drug use review--A review of the patient's drug therapy and prescription drug order or medication order prior to dispensing or distributing the drug.

(45) State--One of the 50 United States of America, a U.S. territory, or the District of Columbia.

(46) Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(47) Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under the Texas Medical Practice Act.

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

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22 TAC §291.32

The Texas State Board of Pharmacy proposes amendments to §291.32, concerning Personnel. The amendments, if adopted, expand the nonjudgmental duties that may be performed by pharmacy technicians, increase the ratio of pharmacists to pharmacy technicians and pharmacy technician trainees, and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide pharmacists with the ability to focus more on patient care by allowing pharmacy technicians to perform more nonjudgmental duties and providing more flexibility in the staffing of pharmacy technicians to better serve the needs of the pharmacy's patients. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.32. Personnel.

(a) Pharmacist-in-charge.

(1) General.

(A) Each Class A pharmacy shall have one pharmacist-in-charge who is employed on a full-time basis and [;] who may be the pharmacist-in-charge for only one such pharmacy; provided, however, such pharmacist-in-charge may be the pharmacist-in-charge of:

(i) more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously; or

(ii) during an emergency, up to two Class A pharmacies open simultaneously if the pharmacist-in-charge works at least 10 hours per week in each pharmacy for no more than a period of 30 consecutive days.

(B) The pharmacist-in-charge shall comply with the provisions of §291.17 of this title (relating to Inventory Requirements).

(C) The pharmacist-in-charge of a Class A pharmacy may not serve as the pharmacist-in-charge of a Class B pharmacy or a Class C pharmacy with 101 beds or more.

(2) Responsibilities. The pharmacist-in-charge shall have responsibility for the practice of pharmacy at the pharmacy for which he or she is the pharmacist-in-charge. The pharmacist-in-charge may advise the owner on administrative or operational concerns. The pharmacist-in-charge shall have responsibility for, at a minimum, the following:

(A) educating and training of pharmacy technicians and pharmacy technician trainees;

(B) supervising a system to assure appropriate procurement of prescription drugs and devices and other products dispensed from the Class A pharmacy;

(C) disposing of and distributing drugs from the Class A pharmacy;

(D) storing all materials, including drugs, chemicals, and biologicals;

(E) maintaining records of all transactions of the Class A pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and sections;

(F) supervising a system to assure maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(G) adhering to policies and procedures regarding the maintenance of records in a data processing system such that the data processing system is in compliance with Class A [~~(community)~~] pharmacy requirements;

(H) legally operating the pharmacy, including meeting all inspection and other requirements of all state and federal laws or sections governing the practice of pharmacy; and

(I) if the pharmacy uses an automated pharmacy dispensing system, shall be responsible for the following:

(i) consulting with the owner concerning and adherence to the policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(ii) inspecting medications in the automated pharmacy dispensing system, at least monthly, for expiration date, misbranding, physical integrity, security, and accountability;

(iii) assigning, discontinuing, or changing personnel access to the automated pharmacy dispensing system;

(iv) ensuring that pharmacy technicians, pharmacy technician trainees, and licensed healthcare professionals performing any services in connection with an automated pharmacy dispensing system have been properly trained on the use of the system and can demonstrate comprehensive knowledge of the written policies and procedures for operation of the system; and

(v) ensuring that the automated pharmacy dispensing system is stocked accurately and an accountability record is maintained in accordance with the written policies and procedures of operation.

(b) Owner. The owner of a Class A pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(1) establishing policies for procurement of prescription drugs and devices and other products dispensed from the Class A pharmacy;

(2) establishing policies and procedures for the security of the prescription department including the maintenance of effective controls against the theft or diversion of prescription drugs;

(3) if the pharmacy uses an automated pharmacy dispensing system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(4) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(5) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(c) Pharmacists.

(1) General.

(A) The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the Class A pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(B) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities in ordering, dispensing, and accounting for prescription drugs.

(C) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and pharmacy technician trainees and for designating and delegating duties, other than those listed in paragraph (2) of this subsection, to pharmacy technicians and pharmacy technician trainees. Each pharmacist shall be responsible for any delegated act performed by pharmacy technicians and pharmacy technician trainees under his or her supervision.

(D) Pharmacists shall directly supervise pharmacy technicians and pharmacy technician trainees who are entering prescription data into the pharmacy's data processing system by one of the following methods.

(i) Physically present supervision. A pharmacist shall be physically present to directly supervise a pharmacy technician or pharmacy technician trainee who is entering prescription data into the data processing system. Each prescription entered into the data processing system shall be verified at the time of data entry. If the pharmacist is not physically present due to a temporary absence as specified in §291.33(b)(3) of this title (relating to Operational Standards), on return the pharmacist must:

(I) conduct a drug regimen review for the prescriptions data entered during this time period as specified in §291.33(c)(2) of this title; and

(II) verify that prescription data entered during this time period was entered accurately.

(ii) Electronic supervision. A pharmacist may electronically supervise a pharmacy technician or pharmacy technician trainee who is entering prescription data into the data processing system provided the pharmacist:

(I) has the ability to immediately communicate directly with the technician/trainee;

(II) has immediate access to any original document containing prescription information or other information related to the dispensing of the prescription. Such access may be through imaging technology provided the pharmacist has the ability to review the original, hardcopy documents if needed for clarification; and

(III) verifies the accuracy of the data entered information prior to the release of the information to the system for storage and/or generation of the prescription label.

(iii) Electronic verification of data entry by pharmacy technicians or pharmacy technician trainees. A pharmacist may electronically verify the data entry of prescription information into a data processing system provided:

(I) the pharmacist has the ability to immediately communicate directly with the technician/trainee;

(II) the pharmacist electronically conducting the verification is either a:

(-a-) Texas licensed pharmacist; or

(-b-) pharmacist employed by a Class E pharmacy that:

(-1-) has the same owner as the Class A pharmacy where the pharmacy technicians/trainees are located; or

(-2-) has entered into a written contract or agreement with the Class A pharmacy[,] which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations;

(III) the pharmacy establishes controls to protect the privacy and security of confidential records; and

(IV) the pharmacy keeps permanent records of prescriptions electronically verified for a period of two years.

(E) All pharmacists, while on duty, shall be responsible for the legal operation of the pharmacy and for complying with all state and federal laws or rules governing the practice of pharmacy.

(F) A dispensing pharmacist shall be responsible for and ensure that the drug is dispensed and delivered safely and accurately as prescribed, unless the pharmacy's data processing system can record the identity of each pharmacist involved in a specific portion of the dispensing processing. If the system can track the identity of each pharmacist involved in the dispensing process, each pharmacist involved in the dispensing process shall be responsible for and ensure that the portion of the process the pharmacist is performing results in the safe and accurate dispensing and delivery of the drug as prescribed. The dispensing process shall include, but not be limited to, drug regimen review and verification of accurate prescription data entry, including prescriptions placed on hold, packaging, preparation, compounding, transferring, labeling, and performance of the final check of the dispensed prescription. An intern has the same responsibilities described in this subparagraph as a pharmacist but must perform his or her duties under the supervision of a pharmacist.

(2) Duties. Duties which may only be performed by a pharmacist are as follows:

(A) receiving oral prescription drug orders for controlled substances and reducing these orders to writing, either manually or electronically;

(B) interpreting prescription drug orders;

(C) selecting drug products;

(D) performing the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed;

(E) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant, as specified in §291.33(c) of this title;

(F) communicating to the patient or the patient's agent on his or her request information concerning any prescription drugs dispensed to the patient by the pharmacy;

(G) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(H) interpreting patient medication records and performing drug regimen reviews;

(I) performing a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with the Medical Practice Act;

(J) verifying that controlled substances listed on invoices are received by clearly recording his/her initials and date of receipt of the controlled substances; and

(K) transferring or receiving a transfer of original prescription information for a controlled substance on behalf of a patient.

(3) Special requirements for compounding. All pharmacists engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(d) Pharmacy Technicians and Pharmacy Technician Trainees.

(1) General.

(A) All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Special requirements for compounding. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title.

(2) Duties.

(A) Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in subsection (c)(2) of this section.

(B) A pharmacist may delegate to pharmacy technicians and pharmacy technician trainees any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(i) unless otherwise provided under §291.33 of this subchapter, a pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians and pharmacy technician trainees;

(ii) pharmacy technicians and pharmacy technician trainees are under the direct supervision of and responsible to a pharmacist; and

(iii) only pharmacy technicians and pharmacy technician trainees who have been properly trained on the use of an automated pharmacy dispensing system and can demonstrate comprehensive knowledge of the written policies and procedures for the operation of the system may be allowed access to the system.

(C) Pharmacy technicians and pharmacy technician trainees may perform only nonjudgmental technical duties associated with the preparation and distribution of prescription drugs, as follows:

(i) initiating and receiving refill authorization requests;

(ii) entering prescription data into a data processing system;

(iii) taking a stock bottle from the shelf for a prescription;

(iv) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(v) affixing prescription labels and auxiliary labels to the prescription container;

(vi) reconstituting medications;

(vii) prepackaging and labeling prepackaged drugs;

(viii) loading bulk unlabeled drugs into an automated dispensing system provided a pharmacist verifies that the system is properly loaded prior to use;

(ix) loading prepackaged containers previously verified by a pharmacist or manufacturer's unit of use packages into an automated dispensing system in accordance with §291.33(i)(2)(D)(III) of this subchapter;

(x) compounding non-sterile prescription drug orders; and

(xi) compounding bulk non-sterile preparations.

(D) In addition to the duties listed above in subparagraph (C) of this paragraph, pharmacy technicians may perform the following nonjudgmental technical duties associated with the preparation and distribution of prescription drugs:

(i) receiving oral prescription drug orders for dangerous drugs and reducing these orders to writing, either manually or electronically;

(ii) transferring or receiving a transfer of original prescription information for a dangerous drug on behalf of a patient; and

(iii) contacting a prescriber for information regarding an existing prescription for a dangerous drug.

(3) Ratio of on-site pharmacists [~~pharmacist~~] to pharmacy technicians and pharmacy technician trainees.

(A) Except as provided in subparagraph (B) of this paragraph, the ratio of on-site pharmacists to pharmacy technicians and pharmacy technician trainees may be 1:6 [~~1:4~~], provided the pharmacist is on-site and a maximum of three of the six are pharmacy technician trainees [~~at least one of the four is a pharmacy technician~~]. The ratio of pharmacists to pharmacy technician trainees may not exceed 1:3.

(B) As specified in §568.006 of the Act, a Class A pharmacy may have a ratio of on-site pharmacists to pharmacy technicians/pharmacy technician trainees of 1:5 provided:

(i) the Class A pharmacy:

(I) dispenses no more than 20 different prescription drugs; and

(II) does not produce sterile preparations including intravenous or intramuscular drugs on-site; and

(ii) the following conditions are met:

(I) at least four are pharmacy technicians and not pharmacy technician trainees; and

(II) the [~~The~~] pharmacy has written policies and procedures regarding the supervision of pharmacy technicians and pharmacy technician trainees, including requirements that the pharmacy technicians and pharmacy technician trainees included in a 1:5 ratio may be involved only in one process at a time. For example, a technician/trainee who is compounding non-sterile preparations or who is involved in the preparation of prescription drug orders may not also call physicians for authorization of refills.

(e) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows.

(1) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and

identifies him or her as a pharmacy technician, or a certified pharmacy technician, if the technician maintains current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the board.

(2) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(3) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(4) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

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

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22 TAC §291.33

The Texas State Board of Pharmacy proposes amendments to §291.33, concerning Operational Standards. The amendments, if adopted, expand the nonjudgmental duties that may be performed by pharmacy technicians.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide pharmacists with the ability to focus more on patient care by allowing pharmacy technicians to perform more nonjudgmental duties. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule"™s applicability; and

(8) The proposed amendments do not positively or adversely affect this state"™s economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.33. Operational Standards.

(a) Licensing requirements.

(1) A Class A pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures as specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class A pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) A Class A pharmacy which changes location and/or name shall notify the board as specified in §291.3 of this title.

(4) A Class A pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures as specified in §291.3 of this title.

(5) A Class A pharmacy shall notify the board in writing within ten days of closing, following the procedures as specified in §291.5 of this title (relating to Closing a Pharmacy).

(6) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(7) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(8) A Class A pharmacy, licensed under the provisions of the Act, §560.051(a)(1), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(2) concerning Nuclear Pharmacy (Class B), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of Subchapter C of this chapter (relating to Nuclear Pharmacy (Class B)), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class A pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(10) A Class A pharmacy shall not compound sterile preparations.

(11) A Class A pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) Class A pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Centralized Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(b) Environment.

(1) General requirements.

(A) The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be clean and in good operating condition.

(B) A Class A pharmacy shall have a sink with hot and cold running water within the pharmacy, exclusive of restroom facilities, available to all pharmacy personnel and maintained in a sanitary condition.

(C) A Class A pharmacy which serves the general public shall contain an area which is suitable for confidential patient counseling.

(i) Such counseling area shall be:

(I) easily accessible to both patient and pharmacists and not allow patient access to prescription drugs; and

(II) designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(ii) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(I) the proximity of the counseling area to the check-out or cash register area;

(II) the volume of pedestrian traffic in and around the counseling area;

(III) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(IV) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(D) The pharmacy shall be properly lighted and ventilated.

(E) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(F) Animals, including birds and reptiles, shall not be kept within the pharmacy and in immediately adjacent areas under the control of the pharmacy. This provision does not apply to fish in aquariums, service animals accompanying disabled persons, or animals for sale to the general public in a separate area that is inspected by local health jurisdictions.

(G) If the pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable materials. Such area shall meet the requirements set by local and state fire laws.

(2) Security.

(A) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

(B) The prescription department shall be locked by key, combination or other mechanical or electronic means to prohibit unauthorized access when a pharmacist is not on-site except as provided in subparagraphs (C) and (D) of this paragraph and paragraph (3) of this subsection. The following is applicable:

(i) If the prescription department is closed at any time when the rest of the facility is open, the prescription department must be physically or electronically secured. The security may be accomplished by means such as floor to ceiling walls; walls, partitions, or barriers at least 9 feet 6 inches high; electronically monitored motion detectors; pull down sliders; or other systems or technologies that will secure the pharmacy from unauthorized entrance when the pharmacy is closed. Pharmacies licensed prior to June 1, 2009, shall be exempt from this provision unless the pharmacy changes location. Change of location shall include the relocation of the pharmacy within the licensed address. A pharmacy licensed prior to June 1, 2009 that files a change of ownership but does not change location shall be exempt from the provisions.

(ii) The pharmacy's key, combination, or other mechanical or electronic means of locking the pharmacy may not be duplicated without the authorization of the pharmacist-in-charge or owner.

(iii) At a minimum, the pharmacy must have a basic alarm system with off-site monitoring and perimeter and motion sensors. The pharmacy may have additional security by video surveillance camera systems.

(C) Prior to authorizing individuals to enter the prescription department, the pharmacist-in-charge or owner may designate persons who may enter the prescription department to perform functions, other than dispensing functions or prescription processing, documented by the pharmacist-in-charge including access to the prescription department by other pharmacists, pharmacy personnel and other individuals. The pharmacy must maintain written documentation of authorized individuals other than individuals employed by the pharmacy who accessed the prescription department when a pharmacist is not on-site.

(D) Only persons designated either by name or by title including such titles as "relief" or "floater" pharmacist, in writing by the pharmacist-in-charge may unlock the prescription department except in emergency situations. An additional key to or instructions on accessing the prescription department may be maintained in a secure location outside the prescription department for use during an emergency or as designated by the pharmacist-in-charge.

(E) Written policies and procedures for the pharmacy's security shall be developed and implemented by the pharmacist-in-charge and/or the owner of the pharmacy. Such policies and procedures may include quarterly audits of controlled substances commonly abused or diverted; perpetual inventories for the comparison of the receipt, dispensing, and distribution of controlled substances; monthly

reports from the pharmacy's wholesaler(s) of controlled substances purchased by the pharmacy; opening and closing procedures; product storage and placement; and central management oversight.

(3) Temporary absence of pharmacist.

(A) On-site supervision by pharmacist.

(i) If a pharmacy is staffed by only one pharmacist, the pharmacist may leave the prescription department for short periods of time without closing the prescription department and removing pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department provided the following conditions are met:

(I) at least one pharmacy technician remains in the prescription department;

(II) the pharmacist remains on-site at the licensed location of the pharmacy and is immediately available;

(III) the pharmacist reasonably believes that the security of the prescription department will be maintained in his or her absence. If in the professional judgment of the pharmacist, the pharmacist determines that the prescription department should close during his or her absence, then the pharmacist shall close the prescription department and remove the pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department during his or her absence; and

(IV) a notice is posted which includes the following information:

(-a-) the pharmacist is on a break and the time the pharmacist will return; and

(-b-) pharmacy technicians may begin the processing of prescription drug orders or refills brought in during the pharmacist's absence, but the prescription or refill may not be delivered to the patient or the patient's agent until the pharmacist verifies the accuracy of the prescription.

(ii) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(I) initiating and receiving refill authorization requests;

(II) entering prescription data into a data processing system;

(III) taking a stock bottle from the shelf for a prescription;

(IV) preparing and packaging prescription drug orders (e.g., counting tablets/capsules, measuring liquids, or placing them in the prescription container);

(V) affixing prescription labels and auxiliary labels to the prescription container; [~~and~~]

(VI) prepackaging and labeling prepackaged drugs;[~~.~~]

(VII) receiving oral prescription drug orders for dangerous drugs and reducing these orders to writing, either manually or electronically;

(VIII) transferring or receiving a transfer of original prescription information for dangerous drugs on behalf of a patient; and

(VIV) contacting a prescriber for information regarding an existing prescription for a dangerous drug.

(iii) Upon return to the prescription department, the pharmacist shall:

(I) conduct a drug regimen review as specified in subsection (c)(2) of this section; and

(II) verify the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent.

(iv) An agent of the pharmacist may deliver a previously verified prescription to the patient or his or her agent provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(v) Any prescription delivered to a patient when a pharmacist is not in the prescription department must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(vi) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a registered pharmacy technician and may perform only the duties of a registered pharmacy technician.

(vii) In pharmacies with two or more pharmacists on duty, the pharmacists shall stagger their breaks and meal periods so that the prescription department is not left without a pharmacist on duty.

(B) Pharmacist is off-site.

(i) The prescription department must be secured with procedures for entry during the time that a pharmacy is not under the continuous on-site supervision of a pharmacist and the pharmacy is not open for pharmacy services.

(ii) Pharmacy technicians and pharmacy technician trainees may not perform any duties of a pharmacy technician or pharmacy technician trainee during the time that the pharmacist is off-site.

(iii) A pharmacy may use an automated storage and distribution device as specified in subsection (i)(4) of this section for pick-up of a previously verified prescription by a patient or patient's agent.

(iv) An agent of the pharmacist may deliver a previously verified prescription to a patient or patient's agent during short periods of time when a pharmacist is off-site, provided the following conditions are met:

(I) short periods of time may not exceed two consecutive hours in a 24 hour period;

(II) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return;

(III) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(IV) the prescription department is locked and secured to prohibit unauthorized entry.

(v) During the time a pharmacist is absent from the prescription department and is off-site, a record of prescriptions delivered must be maintained and contain the following information:

(I) date and time of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(vi) Any prescription delivered to a patient when a pharmacist is not on-site at the pharmacy must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(i) name and description of the drug or device;

(ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self-monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication shall be:

(i) provided to new and existing patients of a pharmacy with each new prescription drug order. A new prescription drug order is one that has not been dispensed by the pharmacy to the patient in the same dosage and strength within the last year;

(ii) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication;

(iv) documented by recording the initials or identification code of the pharmacist providing the counseling in the prescription dispensing record as follows:

(I) on the original hard-copy prescription, provided the counseling pharmacist clearly records his or her initials on the prescription for the purpose of identifying who provided the counseling;

(II) in the pharmacy's data processing system;

(III) in an electronic logbook; or

(IV) in a hard-copy log; and

(v) reinforced with written information relevant to the prescription and provided to the patient or patient's agent. The following is applicable concerning this written information:

(I) Written information must be in plain language designed for the patient and printed in an easily readable font size comparable to but no smaller than ten-point Times Roman. This information may be provided to the patient in an electronic format, such as by e-mail, if the patient or patient's agent requests the information in an electronic format and the pharmacy documents the request.

(II) When a compounded preparation is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(IV) The written information accompanying the prescription or the prescription label shall contain the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(C) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel and/or the pharmacy's computer system may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable:

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subsection (b)(3) of this section.

(ii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) of this paragraph.

(F) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable:

(i) The information as specified in subparagraph (A) of this paragraph shall be delivered with the dispensed prescription in writing.

(ii) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(iii) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and, if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(iv) The pharmacy shall maintain and use adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(v) The pharmacy shall use a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(G) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(2) Pharmaceutical care services.

(A) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall, prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

(I) known allergies;

(II) rational therapy-contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions; and

(X) proper utilization, including overutilization or underutilization.

(ii) Upon identifying any clinically significant conditions, situations, or items listed in clause (i) of this subparagraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences as specified in subparagraph (C) of this paragraph.

(iii) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic database from outside the pharmacy by:

(I) an individual Texas licensed pharmacist employee of the pharmacy provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records; or

(II) a pharmacist employed by a Class E pharmacy provided the pharmacies have entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations.

(iv) Prior to dispensing, any questions regarding a prescription drug order must be resolved with the prescriber and written documentation of these discussions made and maintained as specified in subparagraph (C) of this paragraph.

(B) Other pharmaceutical care services which may be provided by pharmacists include, but are not limited to, the following:

(i) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;

(ii) administering immunizations and vaccinations under written protocol of a physician;

(iii) managing patient compliance programs;

(iv) providing preventative health care services; and

(v) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(C) Documentation of consultation. When a pharmacist consults a prescriber as described in subparagraph (A) of this paragraph, the pharmacist shall document on the prescription or in the pharmacy's data processing system associated with the prescription such occurrences and shall include the following information:

(i) date the prescriber was consulted;

(ii) name of the person communicating the prescriber's instructions;

(iii) any applicable information pertaining to the consultation; and

(iv) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation.

(3) Substitution of generically equivalent drugs or interchangeable biological products. A pharmacist may dispense a generically equivalent drug or interchangeable biological product and shall comply with the provisions of §309.3 of this title (relating to Substitution Requirements).

(4) Substitution of dosage form.

(A) As specified in §562.012 of the Act, a pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets, provided:

(i) the patient consents to the dosage form substitution; and

(ii) the dosage form so dispensed:

(I) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(II) is not an enteric-coated or time release product; and

(III) does not alter desired clinical outcomes.

(B) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(5) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This paragraph does not apply to generic substitution. For generic substitution, see the requirements of paragraph (3) of this subsection.

(A) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery of, the dispensed prescription to the patient. Such notification shall include:

(i) a description of the change;

(ii) the reason for the change;

(iii) whom to notify with questions concerning the change; and

(iv) instructions for return of the drug if not wanted by the patient.

(B) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

(i) the date of the notification;

(ii) the method of notification;

(iii) a description of the change; and

(iv) the reason for the change.

(C) The provisions of this paragraph do not apply to prescriptions for patients in facilities where drugs are administered to patients by a person required to do so by the laws of this state if the practitioner issuing the prescription has agreed to use of a formulary that includes a listing of therapeutic interchanges that the practitioner has agreed to allow. The pharmacy must maintain a copy of the formulary including a list of the practitioners that have agreed to the formulary and the signature of these practitioners.

(6) Prescription containers.

(A) A drug dispensed pursuant to a prescription drug order shall be dispensed in a child-resistant container unless:

(i) the patient or the practitioner requests the prescription not be dispensed in a child-resistant container; or

(ii) the product is exempted from requirements of the Poison Prevention Packaging Act of 1970.

(B) A drug dispensed pursuant to a prescription drug order shall be dispensed in an appropriate container as specified on the manufacturer's container.

(C) Prescription containers or closures shall not be re-used. However, if a patient or patient's agent has difficulty reading or understanding a prescription label, a prescription container may be reused provided:

(i) the container is designed to provide audio-recorded information about the proper use of the prescription medication;

(ii) the container is reused for the same patient;

(iii) the container is cleaned; and

(iv) a new safety closure is used each time the prescription container is reused.

(7) Labeling.

(A) At the time of delivery of the drug, the dispensing container shall bear a label in plain language and printed in an easily readable font size, unless otherwise specified, with at least the following information:

(i) name, address and phone number of the pharmacy;

(ii) unique identification number of the prescription that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(iii) date the prescription is dispensed;

(iv) initials or an identification code of the dispensing pharmacist;

(v) name of the prescribing practitioner;

(vi) if the prescription was signed by a pharmacist, the name of the pharmacist who signed the prescription for a dangerous drug under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code;

(vii) name of the patient or if such drug was prescribed for an animal, the species of the animal and the name of the owner that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman. The name of the patient's partner or family member is not required to be on the label of a drug prescribed for a partner for a sexually transmitted disease or for a patient's family members if the patient has an illness determined by the Centers for Disease Control and Prevention, the World Health Organization, or the Governor's office to be pandemic;

(viii) instructions for use that are printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(ix) quantity dispensed;

(x) appropriate ancillary instructions such as storage instructions or cautionary statements such as warnings of potential harmful effects of combining the drug product with any product containing alcohol;

(xi) if the prescription is for a Schedule II - IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(xii) if the pharmacist has selected a generically equivalent drug or interchangeable biological product pursuant to the

provisions of the Act, Chapter 562, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed;

(xiii) the name and strength of the actual drug or biological product dispensed that is printed in an easily readable size comparable to but no smaller than ten-point Times Roman, unless otherwise directed by the prescribing practitioner;

(I) The name shall be either:

(-a-) the brand name; or

(-b-) if no brand name, then the generic drug or interchangeable biological product name and name of the manufacturer or distributor of such generic drug or interchangeable biological product. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug preparations having no brand name, the principal active ingredients shall be indicated on the label[~~.~~]).

(II) Except as provided in clause (xii) of this subparagraph, the brand name of the prescribed drug or biological product shall not appear on the prescription container label unless it is the drug product actually dispensed.

(xiv) if the drug is dispensed in a container other than the manufacturer's original container, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(xv) either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(B) If the prescription label required in subparagraph (A) of this paragraph is printed in a type size smaller than ten-point Times Roman, the pharmacy shall provide the patient written information containing the information as specified in subparagraph (A) of this paragraph in an easily readable font size comparable to but no smaller than ten-point Times Roman.

(C) The label is not required to include the initials or identification code of the dispensing pharmacist as specified in subparagraph (A) of this paragraph if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(D) The dispensing container is not required to bear the label as specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 90-day supply is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of the drug dispensed;

(-d-) name of the patient; and

(-e-) name of the prescribing practitioner or, if applicable, the name of the pharmacist who signed the prescription drug order;

(II) if the drug is dispensed in a container other than the manufacturer's original container, specifies the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(8) Returning Undelivered Medication to Stock.

(A) As specified in §431.021(w), Health and Safety Code, a pharmacist may not accept an unused prescription or drug, in whole or in part, for the purpose of resale or re-dispensing to any person after the prescription or drug has been originally dispensed or sold, except as provided in §291.8 of this title (relating to Return of Prescription Drugs). Prescriptions that have not been picked up by or delivered to the patient or patient's agent may be returned to the pharmacy's stock for dispensing.

(B) A pharmacist shall evaluate the quality and safety of the prescriptions to be returned to stock.

(C) Prescriptions returned to stock for dispensing shall not be mixed within the manufacturer's container.

(D) Prescriptions returned to stock for dispensing should be used as soon as possible and stored in the dispensing container. The expiration date of the medication shall be the lesser of one year from the dispensing date on the prescription label or the manufacturer's expiration date if dispensed in the manufacturer's original container.

(E) At the time of dispensing, the prescription medication shall be placed in a new prescription container and not dispensed in the previously labeled container unless the label can be completely removed. However, if the medication is in the manufacturer's original container, the pharmacy label must be removed so that no confidential patient information is released.

(d) Equipment and supplies. Class A pharmacies dispensing prescription drug orders shall have the following equipment and supplies:

(1) data processing system including a printer or comparable equipment;

(2) refrigerator;

(3) adequate supply of child-resistant, light-resistant, tight, and if applicable, glass containers;

(4) adequate supply of prescription, poison, and other applicable labels;

(5) appropriate equipment necessary for the proper preparation of prescription drug orders; and

(6) metric-apothecary weight and measure conversion charts.

(e) Library. A reference library shall be maintained which includes the following in hard-copy or electronic format:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act and rules;

(C) Texas Controlled Substances Act and rules; and

(D) Federal Controlled Substances Act and rules (or official publication describing the requirements of the Federal Controlled Substances Act and rules);

(2) at least one current or updated reference from each of the following categories:

(A) a patient prescription drug information reference text or leaflets which are designed for the patient and must be available to the patient;

(B) at least one current or updated general drug information reference which is required to contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken; and

(C) if the pharmacy dispenses veterinary prescriptions, a general reference text on veterinary drugs; and

(3) basic antidote information and the telephone number of the nearest Regional Poison Control Center.

(f) Drugs.

(1) Procurement and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff relative to such responsibility.

(B) Prescription drugs and devices and nonprescription Schedule V controlled substances shall be stored within the prescription department or a locked storage area.

(C) All drugs shall be stored at the proper temperature, as defined in the USP/NF and §291.15 of this title (relating to Storage of Drugs).

(2) Out-of-date drugs or devices.

(A) Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

(B) Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined together until such drugs or devices are disposed of properly.

(3) Nonprescription Schedule V controlled substances.

(A) Schedule V controlled substances containing codeine, dihydrocodeine, or any of the salts of codeine or dihydrocodeine may not be distributed without a prescription drug order from a practitioner.

(B) A pharmacist may distribute nonprescription Schedule V controlled substances which contain no more than 15 milligrams of opium per 29.5729 ml or per 28.35 Gm provided:

(i) such distribution is made only by a pharmacist; a nonpharmacist employee may not distribute a nonprescription Schedule V controlled substance even if under the supervision of a pharmacist; however, after the pharmacist has fulfilled professional and legal responsibilities, the actual cash, credit transaction, or delivery may be completed by a nonpharmacist:

(ii) not more than 240 ml (eight fluid ounces), or not more than 48 solid dosage units of any substance containing opium, may be distributed to the same purchaser in any given 48-hour period without a prescription drug order;

(iii) the purchaser is at least 18 years of age; and

(iv) the pharmacist requires every purchaser not known to the pharmacist to furnish suitable identification (including proof of age where appropriate).

(C) A record of such distribution shall be maintained by the pharmacy in a bound record book. The record shall contain the following information:

(i) true name of the purchaser;

(ii) current address of the purchaser;

(iii) name and quantity of controlled substance purchased;

(iv) date of each purchase; and

(v) signature or written initials of the distributing pharmacist.

(4) Class A Pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(g) Prepackaging of drugs.

(1) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(2) The label of a prepackaged unit shall indicate:

(A) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(B) facility's lot number;

(C) facility's beyond use date; and

(D) quantity of the drug, if the quantity is greater than one.

(3) Records of prepackaging shall be maintained to show:

(A) name of the drug, strength, and dosage form;

(B) facility's lot number;

(C) manufacturer or distributor;

(D) manufacturer's lot number;

(E) manufacturer's expiration date;

(F) quantity per prepackaged unit;

(G) number of prepackaged units;

(H) date packaged;

(I) name, initials, or electronic signature of the prepacker; and

(J) signature, or electronic signature of the responsible pharmacist.

(4) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(h) Customized patient medication packages.

(1) Purpose. In lieu of dispensing two or more prescribed drug products in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, or the prescriber, provide a customized patient medication package (patient med-pak).

(2) Label.

(A) The patient med-pak shall bear a label stating:

(i) the name of the patient;

(ii) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(iii) the name, strength, physical description or identification, and total quantity of each drug product contained therein;

(iv) the directions for use and cautionary statements, if any, contained in the prescription drug order for each drug product contained therein;

(v) if applicable, a warning of the potential harmful effect of combining any form of alcoholic beverage with any drug product contained therein;

(vi) any storage instructions or cautionary statements required by the official compendia;

(vii) the name of the prescriber of each drug product;

(viii) the name, address, and telephone number of the pharmacy;

(ix) the initials or an identification code of the dispensing pharmacist;

(x) the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication;

(xi) either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement; and

(xii) any other information, statements, or warnings required for any of the drug products contained therein.

(B) If the patient med-pak allows for the removal or separation of the intact containers therefrom, each individual container shall bear a label identifying each of the drug product contained therein.

(C) The dispensing container is not required to bear the label as specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 90-day supply is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) name and strength of each drug product dispensed;

(-c-) name of the patient; and

(-d-) name of the prescribing practitioner of each drug product, or the pharmacist who signed the prescription drug order;

(II) the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) for each drug product sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(3) Labeling. The patient med-pak shall be accompanied by a patient package insert, in the event that any drug contained therein is required to be dispensed with such insert as accompanying labeling. Alternatively, such required information may be incorporated into a single, overall educational insert provided by the pharmacist for the total patient med-pak.

(4) Packaging. In the absence of more stringent packaging requirements for any of the drug products contained therein, each container of the patient med-pak shall comply with official packaging standards. Each container shall be either not reclosable or so designed as to show evidence of having been opened.

(5) Guidelines. It is the responsibility of the dispensing pharmacist when preparing a patient med-pak, to take into account any applicable compendial requirements or guidelines and the physical and chemical compatibility of the dosage forms placed within each container, as well as any therapeutic incompatibilities that may attend the simultaneous administration of the drugs.

(6) Recordkeeping. In addition to any individual prescription filing requirements, a record of each patient med-pak shall be made and filed. Each record shall contain, as a minimum:

(A) the name and address of the patient;

(B) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(C) the name of the manufacturer or distributor and lot number for each drug product contained therein;

(D) information identifying or describing the design, characteristics, or specifications of the patient med-pak sufficient to allow subsequent preparation of an identical patient med-pak for the patient;

(E) the date of preparation of the patient med-pak and the beyond-use date that was assigned;

(F) any special labeling instructions; and

(G) the initials or an identification code of the dispensing pharmacist.

(7) The patient med-pak label is not required to include the initials or identification code of the dispensing pharmacist as specified in paragraph (2)(A) of this subsection if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(i) Automated devices and systems in a pharmacy.

(1) Automated counting devices. If a pharmacy uses automated counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with bulk drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(C) the label of an automated counting device container containing a bulk drug shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading bulk drugs into an automated counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated counting device; and

(vii) name, initials, or electronic signature of the responsible pharmacist; and

(E) the automated counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her name, initials, or electronic signature to the record as specified in subparagraph (D) of this paragraph.

(2) Automated pharmacy dispensing systems.

(A) Authority to use automated pharmacy dispensing systems. A pharmacy may use an automated pharmacy dispensing system to fill prescription drug orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated pharmacy dispensing system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the board upon request; and

(iii) the pharmacy will make the automated pharmacy dispensing system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Automated pharmacy dispensing systems may be stocked or loaded by a pharmacist or by a pharmacy technician or pharmacy technician trainee under the supervision of a pharmacist.

(C) Quality assurance program. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall operate according to a quality assurance program of the automated pharmacy dispensing system which:

(i) requires continuous monitoring of the automated pharmacy dispensing system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every twelve months and whenever any upgrade or change is made to the system and documents each such activity.

(D) Policies and procedures of operation.

(i) When an automated pharmacy dispensing system is used to fill prescription drug orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall:

(I) provide for a pharmacist's review, approval, and accountability for the transmission of each original or new prescription drug order to the automated pharmacy dispensing system before the transmission is made;

(II) provide for access to the automated pharmacy dispensing system for stocking and retrieval of medications which is limited to licensed healthcare professionals or pharmacy technicians acting under the supervision of a pharmacist;

(III) require that a pharmacist checks, verifies, and documents that the correct medication and strength of bulk drugs, prepackaged containers, or manufacturer's unit of use packages were properly stocked, filled, and loaded in the automated pharmacy dispensing system prior to initiating the fill process; alternatively, an electronic verification system may be used for verification of manufac-

turer's unit of use packages or prepacked medication previously verified by a pharmacist;

(IV) provide for an accountability record to be maintained that documents all transactions relative to stocking and removing medications from the automated pharmacy dispensing system;

(V) require a prospective drug regimen review is conducted as specified in subsection (c)(2) of this section; and

(VI) establish and make provisions for documentation of a preventative maintenance program for the automated pharmacy dispensing system.

(ii) A pharmacy that uses an automated pharmacy dispensing system to fill prescription drug orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(E) Recovery Plan. A pharmacy that uses an automated pharmacy dispensing system to fill prescription drug orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated pharmacy dispensing system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated pharmacy dispensing system is experiencing downtime;

(ii) procedures for response when an automated pharmacy dispensing system is experiencing downtime; and

(iii) procedures for the maintenance and testing of the written plan for recovery.

(F) Final check of prescriptions dispensed using an automated pharmacy dispensing system. For the purpose of §291.32(c)(2)(D) of this title (relating to Personnel), a pharmacist must perform the final check of all prescriptions prior to delivery to the patient to ensure that the prescription is dispensed accurately as prescribed.

(i) This final check shall be considered accomplished if:

(I) a check of the final product is conducted by a pharmacist after the automated pharmacy dispensing system has completed the prescription and prior to delivery to the patient; or

(II) the following checks are conducted:

(-a-) if the automated pharmacy dispensing system contains bulk stock drugs, a pharmacist verifies that those drugs have been accurately stocked as specified in subparagraph (D)(i)(III) of this paragraph;

(-b-) if the automated pharmacy dispensing system contains manufacturer's unit of use packages or prepackaged medication previously verified by a pharmacist, an electronic verification system has confirmed that the medications have been accurately stocked as specified in subparagraph (D)(i)(III) of this paragraph;

(-c-) a pharmacist checks the accuracy of the data entry of each original or new prescription drug order entered into the automated pharmacy dispensing system; and

(-d-) an electronic verification process is used to verify the proper prescription label has been affixed to the correct medication container, prepackaged medication or manufacturer unit of use package for the correct patient.

(ii) If the final check is accomplished as specified in clause (i)(II) of this subparagraph, the following additional requirements must be met:

(I) the dispensing process must be fully automated from the time the pharmacist releases the prescription to the automated pharmacy dispensing system until a completed, labeled prescription ready for delivery to the patient is produced;

(II) the pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated pharmacy dispensing system dispenses accurately as specified in subparagraph (C) of this paragraph;

(III) the automated pharmacy dispensing system documents and maintains:

(-a-) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in clause (i)(II) of this subparagraph; and

(-b-) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the dispensing process; and

(IV) the pharmacy establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every month rather than every twelve months as specified in subparagraph (C) of this paragraph.

(3) Automated checking device.

(A) For the purpose of §291.32(c)(2)(D) of this title, the final check of a dispensed prescription shall be considered accomplished using an automated checking device provided a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed:

(i) the drug used to fill the order is checked through the use of an automated checking device which verifies that the drug is labeled and packaged accurately; and

(ii) a pharmacist checks the accuracy of each original or new prescription drug order and is responsible for the final check of the order through the automated checking device.

(B) If the final check is accomplished as specified in subparagraph (A) of this paragraph, the following additional requirements must be met:

(i) the pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient;

(ii) the pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(i) of this paragraph; and

(II) the name(s) initials, or identification code(s) and specific activity(ies) of each pharmacist, or pharmacy technician, or pharmacy technician trainee who performs any other portion of the dispensing process;

(iii) the pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly; and

(iv) the pharmacy establishes procedures to ensure that errors identified by the automated checking device may not be overridden by a pharmacy technician and must be reviewed and corrected by a pharmacist.

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 September 14, 2020.

TRD-202003763
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-8010

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22 TAC §291.34

The Texas State Board of Pharmacy proposes amendments to §291.34, concerning Records. The amendments, if adopted, expand the nonjudgmental duties that may be performed by pharmacy technicians and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide pharmacists with the ability to focus more on patient care by allowing pharmacy technicians to perform more nonjudgmental duties and to provide grammatically correct regulatory language. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.34. Records.

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of Subchapter B of this chapter (relating to Community Pharmacy (Class A)) shall be:

(A) kept by the pharmacy at the pharmacy's licensed location and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedule II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances, other than prescription drug orders, listed in Schedules III-V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Professional responsibility.

(A) Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(B) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug unless the pharmacist complies with the requirements of

§562.056 and §562.112 of the Act, and §291.29 of this title (relating to Professional Responsibility of Pharmacists).

(C) Subparagraph (B) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g., a practitioner taking calls for the patient's regular practitioner).

(D) The owner of a Class A pharmacy shall have responsibility for ensuring its agents and employees engage in appropriate decisions regarding dispensing of valid prescriptions as set forth in §562.112 of the Act.

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Dangerous drug prescription orders. Written prescription drug orders shall be:

(I) manually signed by the practitioner; or

(II) electronically signed by the practitioner using a system that electronically replicates the practitioner's manual signature on the written prescription, provided:

(-a-) that security features of the system require the practitioner to authorize each use; and

(-b-) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner. (For example, the paper contains security provisions against copying that results in some indication on the copy that it is a copy and therefore render the prescription null and void.)

(ii) Controlled substance prescription orders. Prescription drug orders for Schedules II, III, IV, or V controlled substances shall be manually signed by the practitioner. Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(iii) Other provisions for a practitioner's signature.

(I) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(II) Rubber stamped signatures may not be used.

(III) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) Prescription drug orders written by practitioners in another state.

(i) Dangerous drug prescription orders. A pharmacist may dispense prescription drug orders for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(ii) Controlled substance prescription drug orders.

(I) A pharmacist may dispense prescription drug orders for Schedule II controlled substances issued by a practitioner in another state provided:

(-a-) the prescription is dispensed as specified in §315.9 of this title (relating to Pharmacy Responsibility - Out-of-State Practitioner - Effective September 1, 2016);

(-b-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-c-) the prescription drug order is not dispensed after the end of the twenty-first day after the date on which the prescription is issued.

(II) A pharmacist may dispense prescription drug orders for controlled substances in Schedules III, IV, or V issued by a physician, dentist, veterinarian, or podiatrist in another state provided:

(-a-) the prescription drug order is issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal DEA registration number, and who may legally prescribe Schedules III, IV, or V controlled substances in such other state;

(-b-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-c-) if there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, a new prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(C) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(i) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner in the Dominion of Canada or the United Mexican States.

(ii) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(I) the prescription drug order is an original written prescription; and

(II) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(D) Prescription drug orders issued by an advanced practice registered nurse, physician assistant, or pharmacist.

(i) A pharmacist may dispense a prescription drug order that is:

(I) issued by an advanced practice registered nurse or physician assistant provided the advanced practice registered nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code; and

(II) for a dangerous drug and signed by a pharmacist under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code.

(ii) Each practitioner shall designate in writing the name of each advanced practice registered nurse or physician assistant authorized to issue a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice registered nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice registered nurse or physician assistant.

(E) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(3) Oral [~~Verbal~~] prescription drug orders.

(A) An oral [~~A verbal~~] prescription drug order for a controlled substance from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions orally [~~verbally~~] for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense an oral [~~a verbal~~] prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(4) Electronic prescription drug orders.

(A) Dangerous drug prescription orders.

(i) An electronic prescription drug order for a dangerous drug may be transmitted by a practitioner or a practitioner's designated agent:

(I) directly to a pharmacy; or

(II) through the use of a data communication device provided:

(-a-) the confidential prescription information is not altered during transmission; and

(-b-) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(B) Controlled substance prescription orders. A pharmacist may only dispense an electronic prescription drug order for a Schedule II, III, IV, or V controlled substance in compliance with federal and state laws and the rules of the Drug Enforcement Administration outlined in Part 1300 of the Code of Federal Regulations.

(C) Prescriptions issued by a practitioner licensed in the Dominion of Canada or the United Mexican States. A pharmacist may not dispense an electronic prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) Facsimile (faxed) prescription drug orders.

(A) A pharmacist may dispense a prescription drug order for a dangerous drug transmitted to the pharmacy by facsimile.

(B) A pharmacist may dispense a prescription drug order for a Schedule III-V controlled substance transmitted to the pharmacy by facsimile provided the prescription is manually signed by the practitioner and not electronically signed using a system that electronically replicates the practitioner's manual signature on the prescription drug order.

(C) A pharmacist may not dispense a facsimile prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(6) Original prescription drug order records.

(A) Original prescriptions may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order, including clarifications to the order given to the pharmacist by the practitioner or the practitioner's agent and recorded on the prescription.

(B) Notwithstanding subparagraph (A) of this paragraph, a pharmacist may dispense a quantity less than indicated on the original prescription drug order at the request of the patient or patient's agent.

(C) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(D) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required. However, an original prescription drug order for a dangerous drug may be changed in accordance with paragraph (10) of this subsection relating to accelerated refills.

(E) Original prescriptions shall be maintained in three separate files as follows:

(i) prescriptions for controlled substances listed in Schedule II;

(ii) prescriptions for controlled substances listed in Schedules III-V; and

(iii) prescriptions for dangerous drugs and nonprescription drugs.

(F) Original prescription records other than prescriptions for Schedule II controlled substances may be stored in a system that is capable of producing a direct image of the original prescription record, e.g., a digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (D) of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(7) Prescription drug order information.

(A) All original prescriptions shall bear:

(i) the name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) the address of the patient; provided, however, that a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) the name, address and telephone number of the practitioner at the practitioner's usual place of business, legibly printed or stamped, and if for a controlled substance, the DEA registration number of the practitioner;

(iv) the name and strength of the drug prescribed;

(v) the quantity prescribed numerically, and if for a controlled substance:

(I) numerically, followed by the number written as a word, if the prescription is written;

(II) numerically, if the prescription is electronic; or

(III) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(vi) directions for use;

(vii) the intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) the date of issuance;

(ix) if a faxed prescription:

(I) a statement that indicates that the prescription has been faxed (e.g., Faxed to); and

(II) if transmitted by a designated agent, the name of the designated agent;

(x) if electronically transmitted:

(I) the date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(II) if transmitted by a designated agent, the name of the designated agent; and

(xi) if issued by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code:

(I) the name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner; and

(II) the address and telephone number of the clinic where the prescription drug order was carried out or signed; and

(xii) if communicated orally or telephonically:

(I) the initials or identification code of the transcribing pharmacist; and

(II) the name of the prescriber or prescriber's agent communicating the prescription information.

(B) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hardcopy prescription or in the pharmacy's data processing system:

(i) the unique identification number of the prescription drug order;

(ii) the initials or identification code of the dispensing pharmacist;

(iii) the initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) the quantity dispensed, if different from the quantity prescribed;

(v) the date of dispensing, if different from the date of issuance; and

(vi) the brand name or manufacturer of the drug or biological product actually dispensed, if the drug was prescribed by generic name or interchangeable biological name or if a drug or interchangeable biological product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563.

(C) Prescription drug orders may be utilized as authorized in Title 40, Part 1, Chapter 19 of the Texas Administrative Code.

(i) A prescription drug order is not required to bear the information specified in subparagraph (A) of this paragraph if the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital). Such prescription drug orders must contain the following information:

(I) the full name of the patient;

(II) the date of issuance;

(III) the name, strength, and dosage form of the drug prescribed;

(IV) directions for use; and

(V) the signature(s) required by 40 TAC §19.1506.

(ii) Prescription drug orders for dangerous drugs shall not be dispensed following one year after the date of issuance unless the authorized prescriber renews the prescription drug order.

(iii) Controlled substances shall not be dispensed pursuant to a prescription drug order under this subparagraph.

(8) Refills.

(A) General information.

(i) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order except as authorized in paragraph (10) of this subsection relating to accelerated refills.

(ii) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills and documented as specified in subsection (l) of this section.

(B) Refills of prescription drug orders for dangerous drugs or nonprescription drugs.

(i) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription drug order.

(ii) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(C) Refills of prescription drug orders for Schedules III-V controlled substances.

(i) Prescription drug orders for Schedules III-V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(ii) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever occurs first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(D) Pharmacist unable to contact prescribing practitioner. If a pharmacist is unable to contact the prescribing practitioner after a reasonable effort, a pharmacist may exercise his or her professional judgment in refilling a prescription drug order for a drug, other than a Schedule II controlled substance, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iii) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(iv) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(v) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vi) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) (relating to Operational Standards) of this title; and

(vii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his or her professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his or her professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (vi) of this subparagraph.

(E) Natural or manmade disasters. If a natural or manmade disaster has occurred that prohibits the pharmacist from being able to contact the practitioner, a pharmacist may exercise his or her professional judgment in refilling a prescription drug order for a drug, other than a Schedule II controlled substance, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 30-day supply;

(iii) the governor has declared a state of disaster;

(iv) the board, through the executive director, has notified pharmacies that pharmacists may dispense up to a 30-day supply of prescription drugs;

(v) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(vi) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vii) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(viii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(ix) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his or her professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his or her professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (viii) of this subparagraph.

(F) Auto-Refill Programs. A pharmacy may use a program that automatically refills prescriptions that have existing refills available in order to improve patient compliance with and adherence to prescribed medication therapy. The following is applicable in order to enroll patients into an auto-refill program:

(i) Notice of the availability of an auto-refill program shall be given to the patient or patient's agent, and the patient or patient's agent must affirmatively indicate that they wish to enroll in such a program and the pharmacy shall document such indication.

(ii) The patient or patient's agent shall have the option to withdraw from such a program at any time.

(iii) Auto-refill programs may be used for refills of dangerous drugs, and Schedules IV and V controlled substances.

Schedules II and III controlled substances may not be dispensed by an auto-refill program.

(iv) As is required for all prescriptions, a drug regimen review shall be completed on all prescriptions filled as a result of the auto-refill program. Special attention shall be noted for drug regimen review warnings of duplication of therapy and all such conflicts shall be resolved with the prescribing practitioner prior to refilling the prescription.

(9) Records Relating to Dispensing Errors. If a dispensing error occurs, the following is applicable.

(A) Original prescription drug orders:

(i) shall not be destroyed and must be maintained in accordance with subsection (a) of this section; and

(ii) shall not be altered. Altering includes placing a label or any other item over any of the information on the prescription drug order (e.g., a dispensing tag or label that is affixed to back of a prescription drug order must not be affixed on top of another dispensing tag or label in such a manner as to obliterate the information relating to the error).

(B) Prescription drug order records maintained in a data processing system:

(i) shall not be deleted and must be maintained in accordance with subsection (a) of this section;

(ii) may be changed only in compliance with subsection (e)(2)(B) of this section; and

(iii) if the error involved incorrect data entry into the pharmacy's data processing system, this record must be either voided or cancelled in the data processing system, so that the incorrectly entered prescription drug order may not be dispensed, or the data processing system must be capable of maintaining an audit trail showing any changes made to the data in the system.

(10) Accelerated refills. In accordance with §562.0545 of the Act, a pharmacist may dispense up to a 90-day supply of a dangerous drug pursuant to a valid prescription that specifies the dispensing of a lesser amount followed by periodic refills of that amount if:

(A) the total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the original prescription, including refills;

(B) the patient consents to the dispensing of up to a 90-day supply and the physician has been notified electronically or by telephone;

(C) the physician has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary;

(D) the dangerous drug is not a psychotropic drug used to treat mental or psychiatric conditions; and

(E) the patient is at least 18 years of age.

(c) Patient medication records.

(1) A patient medication record system shall be maintained by the pharmacy for patients to whom prescription drug orders are dispensed.

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months that is necessary for the dispensing pharmacist to conduct a prospective drug regimen review at the time a prescription drug order is presented for dispensing.

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A) full name of the patient for whom the drug is prescribed;

(B) address and telephone number of the patient;

(C) patient's age or date of birth;

(D) patient's gender;

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug regimen review;

(F) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(G) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such lists shall contain the following information:

(i) date dispensed;

(ii) name, strength, and quantity of the drug dispensed;

(iii) prescribing practitioner's name;

(iv) unique identification number of the prescription; and

(v) name or initials of the dispensing pharmacists.

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained online. A patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) Nothing in this subsection shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(d) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, that indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;

(III) date of each dispensing;

(IV) quantity dispensed at each dispensing;

(V) initials or identification code of the dispensing pharmacist;

(VI) initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III-V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill as specified in subsection (l) of this section.

(4) Each time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual record keeping system as specified in subsection (d) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(C) Requirements for backup systems.

(i) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(ii) Data processing systems shall have a workable (electronic) data retention system that can produce an audit trail of drug usage for the preceding two years as specified in paragraph (2)(H) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records of dispensing to the new data processing system; or

(II) purge the records of dispensing to a printout that contains the same information required on the daily printout as specified in paragraph (2)(C) of this subsection. The information on this hard copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout that contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(2) Records of dispensing.

(A) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(B) Each time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the information should be clearly documented on the hard copy prescription.

(C) The data processing system shall have the capacity to produce a daily hard copy printout of all original prescriptions dispensed and refilled. This hard copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name and the supervising physician's name if the prescription was issued by an advanced practice registered nurse, physician assistant or pharmacist;

(v) name and strength of the drug product actually dispensed; if generic name, the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via computer display, the following shall also be included on the hard copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) any changes made to a record of dispensing.

(D) The daily hard copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of non-controlled substances.

(E) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith, or John H. Smith) within seven days from the date of dispensing.

(F) In lieu of the printout described in subparagraph (C) of this paragraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard copy printout on demand by an authorized agent of the Texas State Board of Pharmacy. If no printer is available on site, the hard copy printout shall be available within 72 hours with a certification by the individual providing the printout, stating that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(G) The pharmacist-in-charge is responsible for the proper maintenance of such records, for ensuring that such data processing system can produce the records outlined in this section, and that such system is in compliance with this subsection.

(H) The data processing system shall be capable of producing a hard copy printout of an audit trail for all dispensing (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) Such audit trail shall contain all of the information required on the daily printout as set out in subparagraph (C) of this paragraph.

(ii) The audit trail required in this subparagraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy.

(I) Failure to provide the records set out in this subsection, either on site or within 72 hours constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(J) The data processing system shall provide online retrieval (via computer display or hard copy printout) of the information set out in subparagraph (C) of this paragraph of:

(i) the original controlled substance prescription drug orders currently authorized for refilling; and

(ii) the current refill history for Schedules III, IV, and V controlled substances for the immediately preceding six-month period.

(K) In the event that a pharmacy using a data processing system experiences system downtime, the following is applicable:

(i) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded, or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(ii) all of the appropriate data shall be retained for online data entry as soon as the system is available for use again.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(A) on the hard copy prescription drug order;

(B) on the daily hard copy printout; or

(C) via the computer display.

(f) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Transfer of prescription drug order information. For the purpose of initial or refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:[.]

(1) The transfer of original prescription drug order information for controlled substances listed in Schedules III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(3) The transfer is communicated orally by telephone or via facsimile:

(A) directly by a pharmacist or pharmacist-intern to another pharmacist or pharmacist-intern for prescription drug order information for controlled substances; or

(B) directly by a pharmacist, pharmacist-intern, or pharmacy technician to another pharmacist, pharmacist-intern, or pharmacy technician for prescription drug order information for dangerous drugs. [~~directly by a pharmacist to another pharmacist, by a pharmacist to a pharmacist-intern, or by a pharmacist-intern to another pharmacist.~~]

(4) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(5) The individual transferring the prescription drug order information shall:

(A) write the word "void" on the face of the invalidated prescription or the prescription is voided in the data processing system;

(B) record the name, address, and if for a controlled substance, the DEA registration number of the pharmacy to which it was transferred, and the name of the receiving individual on the reverse

of the invalidated prescription or stored with the invalidated prescription drug order in the data processing system;

(C) record the date of the transfer and the name of the individual transferring the information; and

(D) if the prescription is transferred electronically, provide the following information:

(i) date of original dispensing and prescription number;

(ii) number of refills remaining and if a controlled substance, the date(s) and location(s) of previous refills;

(iii) name, address, and if a controlled substance, the DEA registration number of the transferring pharmacy;

(iv) name of the individual transferring the prescription; and

(v) if a controlled substance, the name, address, DEA registration number, and prescription number from the pharmacy that originally dispensed the prescription, if different.

(6) The individual receiving the transferred prescription drug order information shall:

(A) write the word "transfer" on the face of the prescription or indicate in the prescription record that the prescription was a transfer; and

(B) reduce to writing all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions), and the following:

(i) date of issuance and prescription number;

(ii) original number of refills authorized on the original prescription drug order;

(iii) date of original dispensing;

(iv) number of valid refills remaining, and if a controlled substance, the date(s) and location(s) of previous refills;

(v) name, address, and if for a controlled substance, the DEA registration number of the transferring pharmacy;

(vi) name of the individual transferring the prescription; and

(vii) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally dispensed the prescription, if different; or

(C) if the prescription is transferred electronically, create an electronic record for the prescription that includes the receiving pharmacist's name and all of the information transferred with the prescription including all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions), and the following:

(i) date of original dispensing;

(ii) number of refills remaining and if a controlled substance, the prescription number(s), date(s) and location(s) of previous refills;

(iii) name, address, and if for a controlled substance, the DEA registration number;

(iv) name of the individual transferring the prescription; and

(v) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally filled the prescription.

(7) Both the individual transferring the prescription and the individual receiving the prescription must engage in confirmation of the prescription information by such means as:

(A) the transferring individual faxes the hard copy prescription to the receiving individual; or

(B) the receiving individual repeats the verbal information from the transferring individual and the transferring individual verbally confirms that the repeated information is correct.

(8) Pharmacies transferring prescriptions electronically shall comply with the following:

(A) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided, however, that during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient or a pharmacist, and the prescription may be read to a pharmacist by telephone;

(B) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes;

(C) If the data processing system does not have the capacity to store all the information as specified in paragraphs (5) and (6) of this subsection, the pharmacist is required to record this information on the original or transferred prescription drug order;

(D) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred; and

(E) Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met:

(i) The original prescription is voided and the pharmacies' data processing systems store all the information as specified in paragraphs (5) and (6) of this subsection;

(ii) Pharmacies not owned by the same entity may electronically access the same prescription drug order records, provided the owner, chief executive officer, or designee of each pharmacy signs an agreement allowing access to such prescription drug order records; and

(iii) An electronic transfer between pharmacies may be initiated by a pharmacist intern, pharmacy technician, or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(9) An individual may not refuse to transfer original prescription information to another individual who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be completed within four business hours of the request.

(10) When transferring a compounded prescription, a pharmacy is required to provide all of the information regarding the compounded preparation, including the formula, unless the formula is patented or otherwise protected, in which case, the transferring pharmacy shall, at a minimum, provide the quantity or strength of all of the active ingredients of the compounded preparation.

(11) The electronic transfer of multiple or bulk prescription records between two pharmacies is permitted provided:

(A) a record of the transfer as specified in paragraph (5) of this subsection is maintained by the transferring pharmacy;

(B) the information specified in paragraph (6) of this subsection is maintained by the receiving pharmacy; and

(C) in the event that the patient or patient's agent is unaware of the transfer of the prescription drug order record, the transferring pharmacy must notify the patient or patient's agent of the transfer and must provide the patient or patient's agent with the telephone number of the pharmacy receiving the multiple or bulk prescription drug order records.

(h) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained that indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) If the distribution is for a Schedule II controlled substance, the following is applicable:

(A) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222) to the distributing pharmacy; and

(B) The distributing pharmacy shall:

(i) complete the area on the DEA order form (DEA 222) titled "To Be Filled in by Supplier";

(ii) maintain Copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and

(iii) forward Copy 2 of the DEA order form (DEA 222) to the Divisional Office of the Drug Enforcement Administration.

(i) Other records. Other records to be maintained by a pharmacy:

(1) a log of the initials or identification codes that will identify each pharmacist, pharmacy technician, and pharmacy technician trainee who is involved in the dispensing process, in the pharmacy's data processing system (the initials or identification code shall be unique to ensure that each individual can be identified, i.e., identical initials or identification codes shall not be used). Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

(2) copy 3 of DEA order forms (DEA 222) that have been properly dated, initialed, and filed, all copies of each unaccepted or defective order form and any attached statements or other documents, and/or for each order filled using the DEA Controlled Substance Ordering System (CSOS), the original signed order and all linked records for that order;

(3) a copy of the power of attorney to sign DEA 222 order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled substances listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(9) a copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to the DEA and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(j) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met:

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the board. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director;

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph; and

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories that shall be maintained at the pharmacy;

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location;

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records; and

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(k) Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity that may legally own and maintain prescription drug records.

(l) Documentation of consultation. When a pharmacist, pharmacist-intern, or pharmacy technicianconsults a prescriber as described in this section, the individual [~~pharmacist~~] shall document such occurrences on the hard copy or in the pharmacy's data processing system associated with the prescription and shall include the following information:

(1) date the prescriber was consulted;

(2) name of the person communicating the prescriber's instructions;

(3) any applicable information pertaining to the consultation; and

(4) initials or identification code of the pharmacist, pharmacist-intern, or pharmacy technician performing the consultation clearly recorded for the purpose of identifying the individual [~~pharmacist~~] who performed the consultation if the information is recorded on the hard copy prescription.

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 September 14, 2020.

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-8010

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SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

22 TAC §291.52

The Texas State Board of Pharmacy proposes amendments to §291.52, concerning Definitions. The amendments, if adopted, update the definition of original prescription and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be provide clear and grammatically correct regulatory language. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not limit or expand an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.52. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set forth in the Act, §551.003.

(1) Act--The Texas Pharmacy Act, Chapters 551 - 569, Occupations Code, as amended.

(2) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order or radioactive prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein

shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Subchapter A, Chapter 562 of the Act.

(3) ACPE--Accreditation Council for Pharmacy Education.

(4) Administer--The direct application of a prescription drug and/or radiopharmaceutical, by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(5) Authentication of product history--Identifying the purchasing source, the intermediate handling, and the ultimate disposition of any component of a radioactive drug.

(6) Authorized nuclear pharmacist--A pharmacist who:

(A) has completed the specialized training requirements specified by this subchapter for the preparation and distribution of radiopharmaceuticals; and

(B) is named on a Texas radioactive material license, issued by the Texas Department of State Health Services, Radiation Control Program.

(7) Authorized user--Any individual named on a Texas radioactive material license, issued by the Texas Department of State Health Services, Radiation Control Program.

(8) Board--The Texas State Board of Pharmacy.

(9) Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(10) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Act.

(11) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(12) Dangerous drug--A drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(13) Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch, or gateway).

(14) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device, radiopharmaceutical, or controlled substance from one person to another, whether or not for a consideration.

(15) Designated agent--

(A) an individual, including a licensed nurse, physician assistant, nuclear medicine technologist, or pharmacist:

(i) who is designated by a practitioner and authorized to communicate a prescription drug order to a pharmacist; and

(ii) for whom the practitioner assumes legal responsibility;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom a practitioner communicates a prescription drug order; or

(C) a registered nurse or physician assistant authorized by a practitioner to administer a prescription drug order for a dangerous drug under Subchapter B, Chapter 157 (Occupations Code).

(16) Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related articles, including any component parts or accessory that is required under federal or state law to be ordered or prescribed by a practitioner.

(17) Diagnostic prescription drug order--A radioactive prescription drug order issued for a diagnostic purpose.

(18) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device, or a radiopharmaceutical in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(19) Dispensing pharmacist--The authorized nuclear pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(20) Distribute--The delivering of a prescription drug or device, or a radiopharmaceutical other than by administering or dispensing.

(21) Electronic radioactive prescription drug order--A radioactive prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(22) Full-time pharmacist--A pharmacist who works in a pharmacy at least 30 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(23) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(24) Nuclear pharmacy technique--The mechanical ability required to perform the nonjudgmental, technical aspects of preparing and dispensing radiopharmaceuticals.

(25) Original prescription--The:

(A) original written radioactive prescription drug orders; or

(B) original oral [~~verbal~~] or electronic radioactive prescription drug orders maintained either manually or electronically [~~by the pharmacist~~].

(26) Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(27) Pharmacy technician--An individual whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(28) Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(29) Radiopharmaceutical--A prescription drug or device that exhibits spontaneous disintegration of unstable nuclei with the emission of a nuclear particle(s) or photon(s), including any nonradioactive reagent kit or nuclide generator that is intended to be used in preparation of any such substance.

(30) Radioactive drug service--The act of distributing radiopharmaceuticals; the participation in radiopharmaceutical selection and the performance of radiopharmaceutical drug reviews.

(31) Radioactive prescription drug order--An order from a practitioner or a practitioner's designated agent for a radiopharmaceutical to be dispensed.

(32) Sterile radiopharmaceutical--A dosage form of a radiopharmaceutical free from living micro-organisms.

(33) Therapeutic prescription drug order--A radioactive prescription drug order issued for a specific patient for a therapeutic purpose.

(34) Ultimate user--A person who has obtained and possesses a prescription drug or radiopharmaceutical for administration to a patient by a practitioner.

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

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TRD-202003765

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: November 1, 2020

For further information, please call: (512) 305-8010

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22 TAC §291.53

The Texas State Board of Pharmacy proposes amendments to §291.53, concerning Personnel. The amendments, if adopted, expand the nonjudgmental duties that may be performed by pharmacy technicians, increase the ratio of pharmacists to pharmacy technicians and pharmacy technician trainees, and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide pharmacists with the ability to focus more on patient care by allowing pharmacy technicians to perform more nonjudgmental duties and providing more flexibility in the staffing of pharmacy technicians to better serve the needs of the pharmacy's patients, and to provide grammatically correct regulatory language. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.53. Personnel.

(a) Pharmacists-in-Charge.

(1) General.

(A) Every nuclear pharmacy shall have an authorized nuclear pharmacist designated on the nuclear pharmacy license as the pharmacist-in-charge who shall be responsible for a nuclear pharmacy's compliance with laws and regulations, both state and federal, pertaining to the practice of nuclear pharmacy.

(B) The nuclear pharmacy pharmacist-in-charge shall see that directives from the board are communicated to the owner(s), management, other pharmacists, and interns of the nuclear pharmacy.

(C) Each Class B pharmacy shall have one pharmacist-in-charge who is employed on a full-time basis[,] and who may be the pharmacist-in-charge for only one such pharmacy; provided, however, such pharmacist-in-charge may be the pharmacist-in-charge of:

(i) more than one Class B pharmacy, if the additional Class B pharmacies are not open to provide pharmacy services simultaneously; or

(ii) during an emergency, up to two Class B pharmacies open simultaneously if the pharmacist-in-charge works at least 10 hours per week in each pharmacy for no more than a period of 30 consecutive days.

(D) The pharmacist-in-charge of a Class B pharmacy may not serve as the pharmacist-in-charge of a Class A pharmacy or a Class C pharmacy with 101 beds or more.

(2) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(A) ensuring that radiopharmaceuticals are dispensed and delivered safely and accurately as prescribed;

(B) developing a system to assure that all pharmacy personnel responsible for compounding and/or supervising the compounding of radiopharmaceuticals within the pharmacy receive appropriate education and training and competency evaluation;

(C) determining that all pharmacists involved in compounding sterile radiopharmaceuticals obtain continuing education appropriate for the type of compounding done by the pharmacist;

(D) supervising a system to assure appropriate procurement of drugs and devices and storage of all pharmaceutical materials, including radiopharmaceuticals, components used in the compounding of radiopharmaceuticals, and drug delivery devices;

(E) assuring that the equipment used in compounding is properly maintained;

(F) developing a system for the disposal and distribution of drugs from the Class B pharmacy;

(G) developing a system for bulk compounding or batch preparation of radiopharmaceuticals;

(H) developing a system for the compounding, sterility assurance, and quality control of sterile radiopharmaceuticals;

(I) maintaining records of all transactions of the Class B pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials, including radiopharmaceuticals, required by applicable state and federal laws and rules;

(J) developing a system to assure the maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(K) assuring that the pharmacy has a system to dispose of radioactive and cytotoxic waste in a manner so as not to endanger the public health; and

(L) legally operating the pharmacy, including meeting all inspection and other requirements of all state and federal laws or rules governing the practice of pharmacy.

(b) Owner. The owner of a Class B pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(1) establishing policies for procurement of prescription drugs and devices and other products dispensed from the Class B pharmacy;

(2) establishing policies and procedures for the security of the prescription department including the maintenance of effective controls against the theft or diversion of prescription drugs;

(3) if the pharmacy uses an automated pharmacy dispensing system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(4) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(5) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(c) Authorized nuclear pharmacists.

(1) General.

(A) The pharmacist-in-charge shall be assisted by a sufficient number of additional authorized nuclear pharmacists as may be required to operate the pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(B) All personnel performing tasks in the preparation and distribution of radiopharmaceuticals shall be under the direct supervision of an authorized nuclear pharmacist. General qualifications for an authorized nuclear pharmacist are the following. A pharmacist shall:

(i) meet minimal standards of training and experience in the handling of radioactive materials in accordance with the requirements of the Texas Regulations for Control of Radiation of the Radiation Control Program, Texas Department of State Health Services;

(ii) be a pharmacist licensed by the board to practice pharmacy in Texas; and

(iii) submit to the board either:

(I) written certification that he or she has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(II) written certification signed by a preceptor authorized nuclear pharmacist that he or she has achieved a level of competency sufficient to independently operate as an authorized nuclear pharmacist and has satisfactorily completed 700 hours in a structured educational program consisting of both:

(-a-) 200 hours of didactic training in a program accepted by the Radiation Control Program, Texas Department of State Health Services, in the following areas:

(-1-) radiation physics and instrumentation;

(-2-) radiation protection;

(-3-) mathematics pertaining to the use and measurement of radioactivity;

(-4-) radiation biology; and

(-5-) chemistry of radioactive material for medical use; and

(-b-) 500 hours of supervised practical experience in a nuclear pharmacy involving the following:

(-1-) shipping, receiving, and performing related radiation surveys;

(-2-) using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(-3-) calculating, assaying, and safely preparing dosages for patients or human research subjects;

(-4-) using administrative controls to avoid adverse medical events in the administration of radioactive material; and

(-5-) using procedures to prevent or minimize contamination and using proper decontamination procedures.

(C) Authorized nuclear pharmacists are solely responsible for the direct supervision of pharmacy technicians and pharmacy technician trainees and for delegating nuclear pharmacy techniques and additional duties, other than those listed in paragraph (3) of this subsection, to pharmacy technicians and pharmacy technician trainees. Each authorized nuclear pharmacist shall:

(i) verify the accuracy of all acts, tasks, or functions performed by pharmacy technicians and pharmacy technician trainees; and

(ii) be responsible for any delegated act performed by pharmacy technicians and pharmacy technician trainees under his or her supervision.

(D) All authorized nuclear pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(E) The dispensing pharmacist shall ensure that the drug is dispensed and delivered safely and accurately as prescribed.

(2) Special requirements for compounding.

(A) Non-sterile preparations. All pharmacists engaged in compounding non-sterile preparations, including radioactive preparations, shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(B) Sterile Preparations. All pharmacists engaged in compounding sterile preparations, including radioactive preparations, shall meet the training requirements specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(3) Duties. Duties which may only be performed by an authorized nuclear pharmacist are as follows:

(A) receiving oral [~~verbal therapeutic~~] prescription drug orders for controlled substances and reducing these orders to writing, either manually or electronically;

[~~(B) receiving verbal, diagnostic prescription drug orders in instances where patient specificity is required for patient safety (e.g., radiolabeled blood products, radiolabeled antibodies) and reducing these orders to writing, either manually or electronically;~~]

(B) [~~(C)~~] interpreting and evaluating radioactive prescription drug orders;

(C) [~~(D)~~] selecting drug products; and

(D) [~~(E)~~] performing the final check of the dispensed prescription before delivery to the patient to ensure that the radioactive prescription drug order has been dispensed accurately as prescribed.

(d) Pharmacy Technicians and Pharmacy Technician Trainees.

(1) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(2) Special requirements for compounding.

(A) Non-sterile preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile preparations, including radioactive preparations, shall meet the training requirements specified in §291.131 of this title.

(B) Sterile Preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding sterile preparations, including radioactive preparations, shall meet the training requirements specified in §291.133 of this title.

(3) Duties.

(A) Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in subsection (c)(3) of this section.

(B) An authorized nuclear pharmacist may delegate to pharmacy technicians and pharmacy technician trainees any nuclear pharmacy technique which is associated with the preparation and distribution of radiopharmaceuticals provided:

(i) an authorized nuclear pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians and pharmacy technician trainees; and

(ii) pharmacy technicians and pharmacy technician trainees are under the direct supervision of and responsible to a pharmacist.

(4) Ratio of authorized nuclear pharmacist to pharmacy technicians and pharmacy technician trainees.

(A) The ratio of authorized nuclear pharmacists to pharmacy technicians and pharmacy technician trainees may be 1:6 [~~1:4~~], provided at least three of the six are pharmacy technicians and are [~~one of the four is a pharmacy technician and is~~] trained in the handling of radioactive materials.

(B) The ratio of authorized nuclear pharmacists to pharmacy technician trainees may not exceed 1:3.

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 September 14, 2020.

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8010

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22 TAC §291.55

The Texas State Board of Pharmacy proposes amendments to §291.55, concerning Records. The amendments, if adopted, expand the nonjudgmental duties that may be performed by pharmacy technicians and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide pharmacists with the ability to focus more on patient care by allowing pharmacy technicians to perform more nonjudgmental duties and to provide grammatically correct regulatory language. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.55. Records.

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under this section shall be:

(A) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format it specifically requested by the board or its representative. Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances, other than original prescription drug orders, listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, "readily retrievable" means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Professional responsibility. Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any radioactive prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a radioactive prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(2) Oral [~~Verbal~~] radioactive prescription drug orders.

(A) Only a pharmacist may receive an oral prescription drug order for a controlled substance. Only an authorized nuclear pharmacist, or a pharmacist-intern or pharmacy technician under the direct supervision of an authorized nuclear pharmacist, may receive from a practitioner or a practitioner's designated agent:

(i) an oral [~~a verbal~~] therapeutic prescription drug order; or

(ii) an oral [~~a verbal~~] diagnostic prescription drug order in instances where patient specificity is required for patient safety (e.g., radiolabeled blood products, radiolabeled antibodies).

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions orally [~~verbally~~] for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense an oral [~~a verbal~~] radioactive prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(3) Radioactive prescription drug orders issued by practitioners in another state.

(A) Dangerous drug prescription orders. A pharmacist may dispense a radioactive prescription drug order for dangerous drugs issued by practitioners in a state other than Texas in the same manner as radioactive prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(B) Controlled substance prescription drug orders. A pharmacist may dispense radioactive prescription drug orders for controlled substances in Schedule III, IV, or V issued by a practitioner in another state provided:

(i) the radioactive prescription drug order is written, oral, or telephonically or electronically communicated prescription as allowed by the DEA issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state; and

(ii) the radioactive prescription drug order is not dispensed more than six months from the initial date of issuance.

(4) Radioactive prescription drug orders issued by practitioners in the United Mexican States or the Dominion of Canada.

(A) Controlled substance prescription drug orders. A pharmacist may not dispense a radioactive prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States.

(B) Dangerous drug prescription drug orders. A pharmacist may dispense a radioactive prescription drug order for a dangerous drug issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided the radioactive prescription drug order is an original written prescription.

(C) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(5) Electronic radioactive prescription drug orders. For the purpose of this paragraph, electronic radioactive prescription drug orders shall be considered the same as oral [~~verbal~~] radioactive prescription drug orders.

(A) An electronic radioactive prescription drug order may be transmitted by a practitioner or a practitioner's designated agent:

(i) directly to a pharmacy; or

(ii) through the use of a data communication device provided:

(I) the confidential prescription information is not altered during transmission; and

(II) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense an electronic radioactive prescription drug order for a:

(i) Schedule II controlled substance except as authorized for faxed prescriptions in §481.074, Health and Safety Code; or

(ii) dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(6) Original prescription drug order records.

(A) Original prescriptions shall be maintained and readily retrievable by the pharmacy and remain accessible for a period of two years from the date of filling.

(B) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required.

(C) Original prescriptions shall be maintained in one of the following formats:

(i) in three separate files as follows:

(I) prescriptions for controlled substances listed in Schedule II;

(II) prescriptions for controlled substances listed in Schedules III - V; and

(III) prescriptions for dangerous drugs and nonprescription drugs; or

(ii) within a patient medication record system provided that original prescriptions for controlled substances are maintained separate from original prescriptions for noncontrolled substances and prescriptions for Schedule II controlled substances are maintained separate from all other original prescriptions.

(D) Original prescription records other than prescriptions for Schedule II controlled substances may be stored on microfilm, microfiche, or other system which is capable of producing a direct image of the original prescription record, e.g., a digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) The original prescription records must be maintained and readily retrievable as specified in subparagraph (C) of this paragraph.

(ii) The pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(7) Prescription drug order information.

(A) All original radioactive prescription drug orders shall bear:

(i) the name of the patient, if applicable at the time of the order;

(ii) the name of the institution;

(iii) the name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(iv) the name of the radiopharmaceutical;

(v) the amount of radioactive material contained in millicuries (mCi), microcuries (uCi), or bequerels (Bq) and the corresponding time that applies to this activity, if different than the requested calibration date and time;

(vi) the date and time of calibration; and

(vii) the date of issuance.

(B) At the time of dispensing, a pharmacist is responsible for the addition of the following information to the original prescription:

(i) the unique identification number of the prescription drug order;

(ii) the initials or identification code of the person who compounded the sterile radiopharmaceutical and the pharmacist who checked and released the product unless maintained in a readily retrievable format;

(iii) the name, quantity, lot number, and expiration date of each product used in compounding the sterile radiopharmaceutical; and

(iv) the date of dispensing, if different from the date of issuance.

(8) Refills. A radioactive prescription drug order must be filled from an original prescription which may not be refilled.

(c) Policy and procedure manual.

(1) All nuclear pharmacies shall maintain a policy and procedure manual. The nuclear pharmacy policy and procedure manual is a compilation of written policy and procedure statements.

(2) A technical operations manual governing all nuclear pharmacy functions shall be prepared. It shall be continually revised to reflect changes in techniques, organizations, etc. All pharmacy personnel shall be familiar with the contents of the manual.

(3) The nuclear pharmacy policies and procedures manual shall be prepared by the pharmacist-in-charge with input from the affected personnel and from other involved staff and committees to govern procurement, preparation, distribution, storage, disposal, and control of all drugs used and the need for policies and procedures relative to procurement of multisource items, inventory, investigational drugs, and new drug applications.

(d) Other records. Other records to be maintained by a pharmacy:

(1) a permanent log of the initials or identification codes which identifies each dispensing pharmacist by name (the initials or identification codes shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes shall not be used);

(2) copy 3 of DEA order forms (DEA 222) which have been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(3) a hard copy of the power of attorney to sign DEA 222 order forms (if applicable);

(4) suppliers' invoices of controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) hard copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(9) a hard copy of any notification required by the Texas Pharmacy Act or these sections, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(e) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of DEA as required by the Code of Federal Regulations, Title 21, §1304.04(a), and submits a copy of this written notification to the board. Unless the registrant is informed by the divisional director of DEA that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph.

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of an authorized agent of the board or any other authorized official.

(5) Ownership of pharmacy records. For purposes of these sections, a pharmacy licensed under the Act is the only entity which may legally own and maintain prescription drug records.

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 September 14, 2020.

TRD-202003767
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-8010

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.74

The Texas State Board of Pharmacy proposes amendments to §291.74, concerning Operational Standards. The amendments, if adopted, clarify certain application requirements and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear and grammatically correct regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not expand or limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.74. Operational Standards.

(a) Licensing requirements.

(1) A Class C pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class C pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) A Class C pharmacy which changes location and/or name shall notify the board of the change as specified in §291.3 of this title.

(4) A Class C pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change following the procedures in §291.3 of this title.

(5) A Class C pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(6) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(7) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(8) A Class C pharmacy, licensed under the Act, §560.051(a)(3), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1) (Community Pharmacy (Class A)) or the Act, §560.051(a)(2) (Nuclear Pharmacy (Class B)), is not required to secure a license for the such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Records), contained in Community Pharmacy (Class A), or §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class C pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-sterile Preparations).

(10) Class C pharmacy personnel shall not compound sterile preparations unless the pharmacy has applied for and obtained a Class C-S pharmacy.

(11) A Class C pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) A Class C pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Central Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(13) A Class C pharmacy with an ongoing clinical pharmacy program that proposes to allow a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist shall make application to the board and submit any information specified on the application. [~~as follows.~~]

[~~(A) The pharmacist-in-charge must submit an application on a form provided by the board, containing the following information:~~]

~~(i)~~ ~~name, address, and pharmacy license number;~~]

~~(ii)~~ ~~name and license number of the pharmacist-in-charge;~~]

~~(iii)~~ ~~name and registration numbers of the pharmacy technicians;~~]

~~(iv)~~ ~~anticipated date the pharmacy plans to begin allowing a pharmacy technician to verify the accuracy of work performed by another pharmacy technician;~~]

~~(v)~~ ~~documentation that the pharmacy has an ongoing clinical pharmacy program; and~~]

~~(vi)~~ ~~any other information specified on the application.~~]

[~~(B) The pharmacy may not allow a pharmacy technician to check the work of another pharmacy technician until the board has reviewed and approved the application and issued an amended license to the pharmacy.~~]

~~(C) Every two years, in connection with the application for renewal of the pharmacy license, the pharmacy shall provide updated documentation that the pharmacy continues to have an ongoing clinical pharmacy program as specified in subparagraph (A)(v) of this paragraph.~~]

(14) A rural hospital that wishes to allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title (relating to Personnel), shall make application to the board and submit any information specified on the application. [~~as follows.~~

[~~(A) Prior to allowing a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title, the pharmacist-in-charge must submit an application on a form provided by the board, containing the following information:~~]

~~(i)~~ ~~name, address, and pharmacy license number;~~]

~~(ii)~~ ~~name and license number of the pharmacist-in-charge;~~]

~~(iii)~~ ~~name and registration number of the pharmacy technicians;~~]

~~(iv)~~ ~~proposed date the pharmacy wishes to start allowing pharmacy technicians to perform the duties specified in §291.73(e)(2)(D) of this title;~~]

~~(v)~~ ~~documentation that the hospital is a rural hospital with 75 or fewer beds and that the rural hospital is either:~~]

~~(I)~~ ~~located in a county with a population of 50,000 or less as defined by the United States Census Bureau in the most recent U.S. census; or~~]

~~(II)~~ ~~designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital; and~~]

~~(vi)~~ ~~any other information specified on the application.~~]

(A) [~~(B)~~] A rural hospital may not allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title until the board has reviewed and approved the application and issued an amended license to the pharmacy.

(B) [~~(C)~~] Every two years, in conjunction with the application for renewal of the pharmacy license, the pharmacist-in-charge shall update the application for pharmacy technicians to perform the duties specified in §291.73(e)(2)(D) of this title and shall attest as required on the application.

(b) Environment.

(1) General requirements.

(A) The institutional pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(B) The institutional pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(C) A sink with hot and cold running water exclusive of restroom facilities shall be available to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(D) The institutional pharmacy shall be properly lighted and ventilated.

(E) The temperature of the institutional pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and/or freezer shall be maintained within a range compatible with the proper storage of drugs.

(F) If the institutional pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable materials. Such area shall meet the requirements set by local and state fire laws.

(G) The institutional pharmacy shall store antiseptics, other drugs for external use, and disinfectants separately from internal and injectable medications.

(2) Security requirements.

(A) The institutional pharmacy shall be enclosed and capable of being locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge shall enter the pharmacy.

(B) Each pharmacist on duty shall be responsible for the security of the institutional pharmacy, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

(C) The institutional pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(c) Equipment and supplies. Institutional pharmacies distributing medication orders shall have the following equipment:

(1) data processing system including a printer or comparable equipment; and

(2) refrigerator and/or freezer and a system or device (e.g., thermometer) to monitor the temperature to ensure that proper storage requirements are met.

(d) Library. A reference library shall be maintained that includes the following in hard-copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act and rules;

(C) Texas Controlled Substances Act and regulations; and

(D) Federal Controlled Substances Act and regulations (or official publication describing the requirements of the Federal Controlled Substances Act and regulations);

(2) at least one current or updated reference from each of the following categories:

(A) drug interactions. A reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(B) a general information reference text;

(3) a current or updated reference on injectable drug products;

(4) basic antidote information and the telephone number of the nearest regional poison control center;

(5) metric-apothecary weight and measure conversion charts.

(e) Absence of a pharmacist.

(1) Medication orders.

(A) In facilities with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable:

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs may be removed from the institutional pharmacy;

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

(I) name of patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

(IV) quantity taken;

(V) time and date; and

(VI) signature (first initial and last name or full signature) or electronic signature of person making withdrawal;

(iv) The original or direct copy of the medication order may substitute for such record, providing the medication order meets all the requirements of clause (iii) of this subparagraph; and

(v) The pharmacist shall verify the withdrawal of drugs from the pharmacy and perform a drug regimen review as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(B) In facilities with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable:

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the institutional pharmacy;

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices; the record shall meet the same requirements as specified in subparagraph (A)(iii) and (iv) of this paragraph;

(iv) The pharmacist shall verify the withdrawal of drugs from the pharmacy after a reasonable interval, but in no event may such interval exceed seven days; and

(v) The pharmacist shall perform a drug regimen review as specified in subsection (g)(1)(B) of this section as follows:

(I) If the facility has an average daily inpatient census of ten or less, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed seven (7) days; or

(II) If the facility has an average inpatient daily census above ten, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed 96 hours.

(III) The average daily inpatient census shall be calculated by hospitals annually immediately following the submission of the hospital's Medicare Cost Report and the number used for purposes of subparagraph (B)(v)(I) and (II) of this paragraph shall be the average of the inpatient daily census in the report and the previous two reports for a three year period.

(2) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable:

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

(i) name of the drug, strength, and dosage form;

(ii) quantity removed;

(iii) location of floor stock;

(iv) date and time; and

(v) signature (first initial and last name or full signature) or electronic signature of person making the withdrawal.

(D) The pharmacist shall verify the withdrawal of drugs from the pharmacy after a reasonable interval, but in no event may such interval exceed seven days.

(3) Rural hospitals. In rural hospitals when a pharmacy technician performs the duties listed in §291.73(e)(2)(D) of this title, the following is applicable:

(A) the pharmacy technician shall make a record of all drugs distributed from the pharmacy. The record shall be maintained in the pharmacy for two years and contain the following information:

(i) name of patient or location where floor stock is distributed;

(ii) name of device or drug, strength, and dosage form;

(iii) dose prescribed or ordered;

(iv) quantity distributed;

(v) time and date of the distribution; and

(vi) signature (first initial and last name or full signature) or electronic signature of nurse or practitioner that verified the actions of the pharmacy technician.

(B) The original or direct copy of the medication order may substitute for the record specified in subparagraph (A) of this paragraph, provided the medication order meets all the requirements of subparagraph (A) of this paragraph.

(C) The pharmacist shall:

(i) verify and document the verification of all distributions made from the pharmacy in the absence of a pharmacist as soon as practical, but in no event more than seven (7) days from the time of such distribution;

(ii) perform a drug regimen review for all medication orders as specified in subsection (g)(1)(B) of this section and document such verification including any discrepancies noted by the pharmacist as follows:

(I) If the facility has an average daily inpatient census of ten or less, the pharmacist shall perform the drug review as soon as practical, but in no event more than seven (7) days from the time of such distribution; or

(II) If the facility has an average daily inpatient census above ten, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed 96 hours;

(III) The average daily inpatient census shall be calculated by hospitals annually immediately following the submission of the hospital's Medicare Cost Report and the number used for purposes of subparagraph (C)(ii)(I) and (II) of this paragraph shall be the average of the inpatient daily census in the report and the previous two reports for a three year period;

(iii) review any discrepancy noted by the pharmacist with the pharmacy technician(s) and make any change in procedures or processes necessary to prevent future problems; and

(iv) report any adverse events that have a potential for harm to a patient to the appropriate committee of the hospital that reviews adverse events.

(f) Drugs.

(1) Procurement, preparation and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(B) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(C) Institutional pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(D) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(E) Any drug bearing an expiration date may not be distributed beyond the expiration date of the drug.

(F) Outdated and other unusable drugs shall be removed from stock and shall be quarantined together until such drugs are disposed of properly.

(2) Formulary.

(A) A formulary shall be developed by the facility committee performing the pharmacy and therapeutics function for the facility. For the purpose of this section, a formulary is a compilation of pharmaceuticals that reflects the current clinical judgment of a facility's medical staff.

(B) The pharmacist-in-charge or pharmacist designated by the pharmacist-in-charge shall be a full voting member of the committee performing the pharmacy and therapeutics function for the facility, when such committee is performing the pharmacy and therapeutics function.

(C) A practitioner may grant approval for pharmacists at the facility to interchange, in accordance with the facility's formulary, for the prescribed drugs on the practitioner's medication orders provided:

(i) the pharmacy and therapeutics committee has developed a formulary;

(ii) the formulary has been approved by the medical staff committee of the facility;

(iii) there is a reasonable method for the practitioner to override any interchange; and

(iv) the practitioner authorizes pharmacists in the facility to interchange on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(3) Prepackaging of drugs.

(A) Distribution within a facility.

(i) Drugs may be prepackaged in quantities suitable for internal distribution by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature; and

(IV) quantity of the drug, if the quantity is greater than one.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker; and

(X) name, initials, or electronic signature of the responsible pharmacist.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(B) Distribution to other Class C (Institutional) pharmacies under common ownership.

(i) Drugs may be prepackaged in quantities suitable for distribution to other Class C (Institutional) pharmacies under common ownership by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature;

(IV) quantity of the drug, if the quantity is greater than one; and

(V) name of the facility responsible for prepackaging the drug.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker;

(X) name, initials, or electronic signature of the responsible pharmacist; and

(XI) name of the facility receiving the prepackaged drug.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(v) The pharmacy shall have written procedure for the recall of any drug prepackaged for another Class C Pharmacy under common ownership. The recall procedures shall require:

(I) notification to the pharmacy to which the prepackaged drug was distributed;

(II) quarantine of the product if there is a suspicion of harm to a patient;

(III) a mandatory recall if there is confirmed or probable harm to a patient; and

(IV) notification to the board if a mandatory recall is instituted.

(4) Sterile preparations prepared in a location other than the pharmacy. A distinctive supplementary label shall be affixed to the container of any admixture. The label shall bear at a minimum:

(A) patient's name and location, if not immediately administered;

(B) name and amount of drug(s) added;

(C) name of the basic solution;

(D) name or identifying code of person who prepared admixture; and

(E) expiration date of solution.

(5) Distribution.

(A) Medication orders.

(i) Drugs may be given to patients in facilities only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (2)(C) of this subsection.

(ii) Drugs may be distributed only from the original or a direct copy of the practitioner's medication order.

(iii) Pharmacy technicians and pharmacy technician trainees may not receive oral [~~verbal~~] medication orders.

(iv) Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(B) Procedures.

(i) Written policies and procedures for a drug distribution system (best suited for the particular institutional pharmacy) shall be developed and implemented by the pharmacist-in-charge, with the advice of the committee performing the pharmacy and therapeutics function for the facility.

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(I) pharmaceutical care services;

(II) handling, storage and disposal of cytotoxic drugs and waste;

(III) disposal of unusable drugs and supplies;

(IV) security;

(V) equipment;

(VI) sanitation;

(VII) reference materials;

(VIII) drug selection and procurement;

(IX) drug storage;

(X) controlled substances;

(XI) investigational drugs, including the obtaining of protocols from the principal investigator;

(XII) prepackaging and manufacturing;

(XIII) stop orders;

(XIV) reporting of medication errors, adverse drug reactions/events, and drug product defects;

(XV) physician orders;

(XVI) floor stocks;

(XVII) drugs brought into the facility;

(XVIII) furlough medications;

(XIX) self-administration;

(XX) emergency drug supply;

(XXI) formulary;

(XXII) monthly inspections of nursing stations and other areas where drugs are stored, distributed, administered or dispensed;

(XXIII) control of drug samples;

(XXIV) outdated and other unusable drugs;

(XXV) routine distribution of patient medication;

(XXVI) preparation and distribution of sterile preparations;

(XXVII) handling of medication orders when a pharmacist is not on duty;

(XXVIII) use of automated compounding or counting devices;

(XXIX) use of data processing and direct imaging systems;

(XXX) drug administration to include infusion devices and drug delivery systems;

(XXXI) drug labeling;

(XXXII) recordkeeping;

(XXXIII) quality assurance/quality control;

(XXXIV) duties and education and training of professional and nonprofessional staff;

(XXXV) procedures for a pharmacy technician to verify the accuracy of work performed by another pharmacy technician, if applicable;

(XXXVI) operation of the pharmacy when a pharmacist in not on-site; and

(XXXVII) emergency preparedness plan, to include continuity of patient therapy and public safety.

(6) Discharge Prescriptions. Discharge prescriptions must be dispensed and labeled in accordance with §291.33 of this title (relating to Operational Standards) except that certain medications packaged in unit-of-use containers, such as metered-dose inhalers, insulin pens, topical creams or ointments, or ophthalmic or otic preparation that are administered to the patient during the time the patient was a patient in the hospital, may be provided to the patient upon discharge provided the pharmacy receives a discharge order and the product bears a label containing the following information:

(A) name of the patient;

(B) name and strength of the medication;

(C) name of the prescribing or attending practitioner;

(D) directions for use;

(E) duration of therapy (if applicable); and

(F) name and telephone number of the pharmacy.

(g) Pharmaceutical care services.

(1) The pharmacist-in-charge shall assure that at least the following pharmaceutical care services are provided to patients of the facility: [:]

(A) Drug utilization review. A systematic ongoing process of drug utilization review shall be developed in conjunction with the medical staff to increase the probability of desired patient outcomes and decrease the probability of undesired outcomes from drug therapy.

(B) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall evaluate medication orders and patient medication records for:

(I) known allergies;

(II) rational therapy--contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions;

(X) proper utilization, including overutilization or underutilization; and

(XI) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(ii) The drug regimen review shall be conducted on a prospective basis when a pharmacist is on duty, except for an emergency order, and on a retrospective basis as specified in subsection (e)(1) or (e)(3) of this section when a pharmacist is not on duty.

(iii) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(iv) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by an individual Texas licensed pharmacist employee of the pharmacy, provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records.

(C) Education. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies that assure that:

(i) the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use; and

(ii) health care providers are provided with patient specific drug information.

(D) Patient monitoring. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies to ensure that the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider.

(2) Other pharmaceutical care services which may be provided by pharmacists in the facility include, but are not limited to, the following:

(A) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;

(B) administering immunizations and vaccinations under written protocol of a physician;

(C) managing patient compliance programs;

(D) providing preventative health care services; and

(E) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(h) Emergency rooms.

(1) During the times a pharmacist is on duty in the facility any prescription drugs supplied to an outpatient, including emergency department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty in the facility, the following is applicable for supplying prescription drugs to be taken home by the patient for self-administration from the emergency room. If the patient has been admitted to the emergency room and assessed by a practitioner at the hospital, the following procedures shall be observed in supplying prescription drugs from the emergency room.

(A) Dangerous drugs and/or controlled substances may only be supplied in accordance with the system of control and accountability for dangerous drugs and/or controlled substances administered or supplied from the emergency room; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(B) Only dangerous drugs and/or controlled substances listed on the emergency room drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's emergency department committee (or like group or person responsible for policy in that department) and shall consist of dangerous drugs and/or controlled substances of the nature and type to meet the immediate needs of emergency room patients.

(C) Dangerous drugs and/or controlled substances may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately prelabeled (including necessary auxiliary labels) by the institutional pharmacy.

(D) At the time of delivery of the dangerous drugs and/or controlled substances, the practitioner or licensed nurse under the supervision of a practitioner shall appropriately complete the label with at least the following information:

(i) name, address, and phone number of the facility;

(ii) date supplied;

(iii) name of practitioner;

(iv) name of patient;

(v) directions for use;

(vi) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(vii) quantity supplied; and

(viii) unique identification number.

(E) The practitioner, or a licensed nurse under the supervision of the practitioner, shall give the appropriately labeled, prepackaged drug to the patient and explain the correct use of the drug.

(F) A perpetual record of dangerous drugs and/or controlled substances supplied from the emergency room shall be maintained in the emergency room. Such record shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(v) quantity supplied; and

(vi) unique identification number.

(G) The pharmacist-in-charge, or staff pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(i) Radiology departments.

(1) During the times a pharmacist is on duty, any prescription drugs dispensed to an outpatient, including radiology department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty, the following procedures shall be observed in supplying prescription drugs from the radiology department.

(A) Prescription drugs may only be supplied to patients who have been scheduled for an x-ray examination at the facility.

(B) Prescription drugs may only be supplied in accordance with the system of control and accountability for prescription drugs administered or supplied from the radiology department and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only prescription drugs listed on the radiology drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's radiology committee (or like group or persons responsible for policy in that department) and shall consist of drugs for the preparation of a patient for a radiological procedure.

(D) Prescription drugs may only be supplied in prepackaged quantities in suitable containers and prelabeled by the institutional pharmacy with the following information:

(i) name and address of the facility;

(ii) directions for use;

(iii) name and strength of the prescription drug--if generic name, the name of the manufacturer or distributor of the prescription drug;

(iv) quantity;

(v) facility's lot number and expiration date; and

(vi) appropriate ancillary label(s).

(E) At the time of delivery of the prescription drug, the practitioner or practitioner's agent shall complete the label with the following information:

(i) date supplied;

(ii) name of physician;

(iii) name of patient; and

(iv) unique identification number.

(F) The practitioner or practitioner's agent shall give the appropriately labeled, prepackaged prescription drug to the patient.

(G) A perpetual record of prescription drugs supplied from the radiology department shall be maintained in the radiology department. Such records shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the prescription drug; or if no brand name, then the generic name, strength, dosage form, and the name of the manufacturer or distributor of the prescription drug;

(v) quantity supplied; and

(vi) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(j) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with unlabeled drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading unlabeled drugs into an automated compounding or counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (D) of this paragraph.

(2) Automated medication supply systems.

(A) Authority to use automated medication supply systems. A pharmacy may use an automated medication supply system to fill medication orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated medication supply system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the Board upon request; and

(iii) the pharmacy will make the automated medication supply system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated medication supply system to fill medication orders shall operate according to a written program for quality assurance of the automated medication supply system which:

(i) requires continuous monitoring of the automated medication supply system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every

six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated medication supply system is used to store or distribute medications for administration pursuant to medication orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall establish requirements for operation of the automated medication supply system and shall describe policies and procedures that:

(I) include a description of the policies and procedures of operation;

(II) provide for a pharmacist's review and approval of each original or new medication order prior to withdrawal from the automated medication supply system:

(-a-) before the order is filled when a pharmacist is on duty except for an emergency order;

(-b-) retrospectively within 72 hours in a facility with a full-time pharmacist when a pharmacist is not on duty at the time the order is made; or

(-c-) retrospectively within 7 days in a facility with a part-time or consultant pharmacist when a pharmacist is not on duty at the time the order is made;

(III) provide for access to the automated medication supply system for stocking and retrieval of medications which is limited to licensed healthcare professionals, pharmacy technicians, or pharmacy technician trainees acting under the supervision of a pharmacist;

(IV) provide that a pharmacist is responsible for the accuracy of the restocking of the system. The actual restocking may be performed by a pharmacy technician or pharmacy technician trainee;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated medication supply system;

(VI) require a prospective or retrospective drug regimen review is conducted as specified in subsection (g) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated medication supply system.

(ii) A pharmacy which uses an automated medication supply system to fill medication orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department (e.g., Pyxis). A pharmacy technician or pharmacy technician trainee may restock an automated medication supply system located outside of the pharmacy department with prescription drugs provided:

(i) prior to distribution of the prescription drugs a pharmacist verifies that the prescription drugs pulled to stock the automated supply system match the list of prescription drugs generated by the automated medication supply system except as specified in §291.73(e)(2)(C)(ii) of this title; or

(ii) all of the following occur:

(I) the prescription drugs to restock the system are labeled and verified with a machine readable product identifier, such as a barcode;

(II) either:

(-a-) the drugs are in tamper evident product packaging, packaged by an FDA registered repackager or manufacturer, that is shipped to the pharmacy; or

(-b-) if any manipulation of the product occurs in the pharmacy prior to restocking, such as repackaging or extemporaneous compounding, the product must be checked by a pharmacist; and

(III) quality assurance audits are conducted according to established policies and procedures to ensure accuracy of the process.

(E) Recovery Plan. A pharmacy which uses an automated medication supply system to store or distribute medications for administration pursuant to medication orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated medication supply system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated medication supply system is experiencing downtime;

(ii) procedures for response when an automated medication supply system is experiencing downtime;

(iii) procedures for the maintenance and testing of the written plan for recovery; and

(iv) procedures for notification of the Board and other appropriate agencies whenever an automated medication supply system experiences downtime for more than two days of operation or a period of time which significantly limits the pharmacy's ability to provide pharmacy services.

(3) Verification of medication orders prepared by the pharmacy department through the use of an automated medication supply system. A pharmacist must check drugs prepared pursuant to medication orders to ensure that the drug is prepared for distribution accurately as prescribed. This paragraph does not apply to automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department.

(A) This check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed preparation of the medication order and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated medication supply system contains unlabeled stock drugs, a pharmacist verifies that those drugs have been accurately stocked; and

(II) a pharmacist checks the accuracy of the data entry of each original or new medication order entered into the automated medication supply system before the order is filled.

(B) If the final check is accomplished as specified in subparagraph (A)(ii) of this paragraph, the following additional requirements must be met.

(i) The medication order preparation process must be fully automated from the time the pharmacist releases the medica-

tion order to the automated system until a completed medication order, ready for delivery to the patient, is produced.

(ii) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated medication supply system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated medication supply system documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(ii) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every month rather than every six months as specified in paragraph (2)(B) of this subsection.

(4) Automated checking device.

(A) For the purpose of this subsection, an automated checking device is a fully automated device which confirms, after a drug is prepared for distribution but prior to delivery to the patient, that the correct drug and strength has been labeled with the correct label for the correct patient.

(B) The final check of a drug prepared pursuant to a medication order shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new medication order.

(ii) the medication order is prepared, labeled, and made ready for delivery to the patient in compliance with Class C (Institutional) Pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the medication order has been prepared safely and accurately as prescribed.

(C) If the final check is accomplished as specified in subparagraph (B) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (B)(i) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

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 September 14, 2020.

TRD-202003768
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-8010

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SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.101

The Texas State Board of Pharmacy proposes amendments to §291.101, concerning Purpose. The amendments, if adopted, permit Class E pharmacies to process prescription drug orders and perform other pharmaceutical services as defined by Board rule, in accordance with House Bill 2847.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding the operations of Class E pharmacies. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation in order to be consistent with state law;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.101. Purpose.

(a) The purpose of these rules is to provide standards for the operation of non-resident pharmacies (Class E) which:

(1) dispense a prescription drug or device under a prescription drug order and deliver the drug or device to a patient in this state, by the United States mail, a common carrier, or a delivery service; [.]

(2) process a prescription drug order for a patient, including a patient in this state; or

(3) perform another pharmaceutical service defined by board rule.

(b) These rules are in accordance with §554.051(a) and (b) of the Act which permit the board to make rules concerning the operation of licensed pharmacies in this state applicable to pharmacies licensed by the board that are located in another state. The board has determined that these rules are necessary to protect the health and welfare of the citizens of this state.

(c) Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located, Class E Pharmacies are required to comply with the provisions of §§291.101 - 291.105 of this chapter (relating to Purpose, Definitions, Personnel, Operational Standards, and Records).

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 September 14, 2020.

TRD-202003769
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-8010

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22 TAC §291.102

The Texas State Board of Pharmacy proposes amendments to §291.102, concerning Definitions. The amendments, if adopted, permit Class E pharmacies to process prescription drug orders and perform other pharmaceutical services as defined by Board rule, in accordance with House Bill 2847.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding the operations of Class E pharmacies. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation in order to be consistent with state law;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.102. Definitions.

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

(1) Act--The Texas Pharmacy Act, Chapters 551-566, Occupations Code, as amended.

(2) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Subchapter A of Chapter 562 of the Texas Pharmacy Act relating to Prescription and Substitution Requirements.

(3) Board--The Texas State Board of Pharmacy.

(4) Class E pharmacy license or non-resident pharmacy license--a license issued to a pharmacy located in another state whose primary business is to:

(A) dispense a prescription drug or device under a prescription drug order[~~;~~] and

[~~(B)~~] to deliver the drug or device to a patient, including a patient in this state, by the United States mail, common carrier, or delivery service; [~~.~~]

(B) process a prescription drug order for a patient, including a patient in this state; or

(C) perform another pharmaceutical service defined by board rule.

(5) Confidential Record--Any health related record, including a patient medication record, prescription drug order, or medication order that:

(A) contains information that identifies an individual; and

(B) is maintained by a pharmacy or pharmacist.

(6) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(7) Dispense--Preparing, packaging, compounding, or labeling, in the course of professional practice, a prescription drug or device for delivery to an ultimate user or the user's agent under a practitioner's lawful order.

(8) Distribute--To deliver a prescription drug or device other than by administering or dispensing.

(9) Generically equivalent--A drug that is "pharmaceutically equivalent" and "therapeutically equivalent" to the drug prescribed.

(10) New prescription drug order--A prescription drug order that:

(A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;

(B) is transferred from another pharmacy; and/or

(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)

(11) Pharmaceutically equivalent--Drug products which have identical amounts of the same active chemical ingredients in the same dosage form and which meet the identical compendial or other applicable standards of strength, quality, and purity according to the United States Pharmacopoeia or other nationally recognized compendium.

(12) Pharmacist--For the purpose of this subchapter, a person licensed to practice pharmacy in the state where the Class E pharmacy is located.

(13) Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with statutes and rules pertaining to the practice of pharmacy.

(14) Practitioner--

(A) a person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state, including a physician, dentist, podiatrist, or veterinarian but excluding a person licensed under the Act;

(B) a person licensed by another state, Canada, or the United Mexican States in a health field in which, under the law of this state, a license holder in this state may legally prescribe a dangerous drug; or

(C) a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number and who may legally prescribe a Schedule II, III, IV, or V controlled substance, as specified under Chapter 481, Health and Safety Code, in that other state.

(15) Prescription drug order--an order from a practitioner or a practitioner's designated agent to a pharmacist for a drug or device to be dispensed.

(16) Therapeutically equivalent--Pharmaceutically equivalent drug products which, when administered in the same amounts, will provide the same therapeutic effect, identical in duration and intensity.

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 September 14, 2020.

TRD-202003770
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-8010

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.121

The Texas State Board of Pharmacy proposes amendments to §291.121, concerning Remote Pharmacy Services. The amendments, if adopted, expand the nonjudgmental duties that may be performed by pharmacy technicians and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide pharmacists with the ability to focus more on patient care by allowing pharmacy technicians to perform more nonjudgmental duties and to provide grammatically correct regulatory language. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.121. Remote Pharmacy Services.

(a) Remote pharmacy services using automated pharmacy systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an automated pharmacy system as outlined in §562.109 of the Texas Pharmacy Act.

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

(A) Automated pharmacy system--A mechanical system that dispenses prescription drugs and maintains related transaction information.

(B) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container, or quantities of unit dosed drugs, into another cartridge or container for dispensing by a pharmacist using an automated pharmacy system.

(C) Provider pharmacy--The community pharmacy (Class A) or the institutional pharmacy (Class C) providing remote pharmacy services.

(D) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, in remote sites.

(E) Remote site--A facility not located at the same location as a Class A or Class C pharmacy, at which remote pharmacy services are provided using an automated pharmacy dispensing system.

(F) Unit dose--An amount of a drug packaged in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using an automated pharmacy system to a jail or prison operated by or for the State of Texas, a jail or prison operated by local government or a healthcare facility regulated under Chapter 142, 241, 242, 247, or 252, Health and Safety Code, provided drugs are administered by a licensed healthcare professional working in the jail, prison, or healthcare facility.

(B) A provider pharmacy may provide remote pharmacy services at more than one remote site.

(C) Before providing remote pharmacy services, the automated pharmacy system at the remote site must be tested by the provider pharmacy and found to dispense accurately. The provider pharmacy shall make the results of such testing available to the board upon request.

(D) A provider pharmacy which is licensed as an institutional (Class C) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title (relating to Definitions, Personnel, Operational Standards, and Records for Class A (Community) Pharmacies) and this section.

(E) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the automated pharmacy system located at the remote site including supervision of the automated pharmacy system and compliance with this section.

(F) A pharmacist from the provider pharmacy shall be accessible at all times to respond to patient's or other health professionals' questions and needs pertaining to drugs dispensed through the use of the automated pharmacy system. Such access may be through a 24 hour pager service or telephone which is answered 24 hours a day.

(4) Operational standards.

(A) Application for permission to provide pharmacy services using an automated pharmacy system.

(i) A Class A or Class C Pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an automated pharmacy system.

(ii) Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

(iii) Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the remote site.

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of:

(I) a remote site where an automated pharmacy system is operated by the pharmacy; or

(II) a remote pharmacy service at a remote site.

(ii) A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site if controlled substances are maintained within an automated pharmacy system at the facility.

(iii) A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 (relating to Notifications) of this title.

(C) Environment/Security.

(i) A provider pharmacy shall only store drugs at a remote site within an automated pharmacy system which is locked by key, combination or other mechanical or electronic means so as to prohibit access by unauthorized personnel.

(ii) An automated pharmacy system shall be under the continuous supervision of a provider pharmacy pharmacist. To qualify as continuous supervision, the pharmacist is not required to be physically present at the site of the automated pharmacy system if the system is supervised electronically by a pharmacist.

(iii) Automated pharmacy systems shall have adequate security and procedures to:

(I) comply with federal and state laws and regulations; and

(II) maintain patient confidentiality.

(iv) Access to the automated pharmacy system shall be limited to pharmacists or personnel who:

(I) are designated in writing by the pharmacist-in-charge; and

(II) have completed documented training concerning their duties associated with the automated pharmacy system.

(v) Drugs shall be stored in compliance with the provisions of §291.15 of this title (relating to Storage of Drugs) and §291.33(f)(2) of this title including the requirements for temperature and handling of outdated drugs.

(D) Prescription dispensing and delivery.

(i) Drugs shall only be dispensed at a remote site through an automated pharmacy system after receipt of an original prescription drug order by a pharmacist at the provider pharmacy in a manner authorized by §291.34(b) of this title.

(ii) A pharmacist at the provider pharmacy shall control all operations of the automated pharmacy system and approve the release of the initial dose of a prescription drug order. Subsequent doses from an approved prescription drug order may be removed from the automated medication system after this initial approval. Any change made in the prescription drug order shall require a new approval by a pharmacist to release the drug.

(iii) A pharmacist at the provider pharmacy shall conduct a drug regimen review as specified in §291.33(c) of this title prior to releasing a prescription drug order to the automated pharmacy system.

(iv) Drugs dispensed by the provider pharmacy through an automated pharmacy system shall comply with the labeling or labeling alternatives specified in §291.33(c) of this title.

(v) An automated pharmacy system used to meet the emergency medication needs for residents of a remote site must comply with the requirements for emergency medication kits in subsection (b) of this section.

(E) Drugs.

(i) Drugs for use in an automated pharmacy system shall be packaged in the original manufacturer's container or be prepackaged in the provider pharmacy and labeled in compliance with the board's prepackaging requirements for the class of pharmacy.

(ii) Drugs dispensed from the automated pharmacy system may be returned to the pharmacy for reuse provided the drugs are in sealed, tamper evident packaging which has not been opened.

(F) Stocking an automated pharmacy system.

(i) Stocking of drugs in an automated pharmacy system shall be completed by a pharmacist, pharmacy technician, or pharmacy technician trainee under the direct supervision of a pharmacist, except as provided in clause (ii) of this subparagraph.

(ii) If the automated pharmacy system uses removable cartridges or containers to hold drugs, the prepackaging of the cartridges or containers shall occur at the provider pharmacy unless provided by an FDA approved repackager. The prepackaged cartridges or containers may be sent to the remote site to be loaded into the machine by personnel designated by the pharmacist-in-charge provided:

(I) a pharmacist verifies the cartridge or container has been properly filled and labeled;

(II) the individual cartridges or containers are transported to the remote site in a secure, tamper-evident container; and

(III) the automated pharmacy system uses barcoding, microchip, or other technologies to ensure that the containers are accurately loaded in the automated pharmacy system.

(iii) All drugs to be stocked in the automated pharmacy system shall be delivered to the remote site by the provider pharmacy.

(G) Quality assurance program. A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall operate according to a written program for quality assurance of the automated pharmacy system which:

(i) requires continuous supervision of the automated pharmacy system; and

(ii) establishes mechanisms and procedures to routinely test the accuracy of the automated pharmacy system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(H) Policies and procedures of operation.

(i) A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) a current list of the name and address of the pharmacist-in-charge and personnel designated by the pharmacist-in-charge to have access to the drugs stored in the automated pharmacy system;

(II) duties which may only be performed by a pharmacist;

(III) a copy of the portion of the written contract or agreement between the pharmacy and the facility which outlines the services to be provided and the responsibilities and accountabilities of each party relating to the operation of the automated pharmacy system in fulfilling the terms of the contract in compliance with federal and state laws and regulations;

(IV) date of last review/revision of the policy and procedure manual; and

(V) policies and procedures for:

(-a-) security;

(-b-) operation of the automated pharmacy system;

(-c-) preventative maintenance of the automated pharmacy system;

(-d-) sanitation;

(-e-) storage of drugs;

(-f-) dispensing;

(-g-) supervision;

(-h-) drug procurement;

(-i-) receiving of drugs;

(-j-) delivery of drugs; and

(-k-) record keeping.

(ii) A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services using an automated pharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of the automated pharmacy system to dispense prescription drugs. The written plan for recovery shall include:

(I) planning and preparation for maintaining pharmacy services when an automated pharmacy system is experiencing downtime;

(II) procedures for response when an automated pharmacy system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The provider pharmacy shall maintain original prescription drug orders for drugs dispensed from an automated pharmacy system in compliance with §291.34(b) of this title.

(iii) if prescription drug records are maintained in a data processing system, the system shall have a workable (electronic) data retention system which can produce a separate audit trail of drug usage by the provider pharmacy and each remote site for the preceding two years as specified in §291.34(e) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Records of dispensing. Dispensing records for a prescription drug order shall be maintained by the provider pharmacy in the manner required by §291.34(d) or (e) of this title.

(D) Transaction information.

(i) The automated pharmacy system shall electronically record all transactions involving drugs stored in, removed, or dispensed from the system.

(ii) Records of dispensing from an automated pharmacy system for a patient shall be maintained by the providing pharmacy and include the:

(I) identity of the system accessed;

(II) identification of the individual accessing the system;

(III) date of transaction;

(IV) name, strength, dosage form, and quantity of drug accessed; and

(V) name of the patient for whom the drug was accessed.

(iii) Records of stocking or removal from an automated pharmacy system shall be maintained by the pharmacy and include the:

(I) date;

(II) name, strength, dosage form, and quantity of drug stocked or removed;

(III) name, initials, or identification code of the person stocking or removing drugs from the system;

(IV) name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled;

(E) Patient medication records. Patient medication records shall be created and maintained by the provider pharmacy in the manner required by §291.34(c) of this title.

(F) Inventory.

(i) A provider pharmacy shall:

(I) keep a record of all drugs sent to and returned from a remote site separate from the records of the provider pharmacy and from any other remote site's records; and

(II) keep a perpetual inventory of controlled substances and other drugs required to be inventoried under §291.17 of this title (relating to Inventory Requirements for All Classes of Pharmacies) that are received and dispensed or distributed from each remote site.

(ii) As specified in §291.17 of this title, a provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

(I) The inventory of each remote site and the provider pharmacy shall be taken on the same day.

(II) The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs of the provider pharmacy.

(b) Remote pharmacy services using emergency medication kits.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an emergency medication kit as outlined in §562.108 of the Texas Pharmacy Act.

(2) Definitions. The following words and terms, when used in this subsection, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings defined in the Act or §291.31 of this title.

(A) Automated pharmacy system--A mechanical system that dispenses prescription drugs and maintains related transaction information.

(B) Emergency medication kits--Controlled substances and dangerous drugs maintained by a provider pharmacy to meet the emergency medication needs of a resident:

(i) at an institution licensed under Chapter 242 or 252, Health and Safety Code; or

(ii) at an institution licensed under Chapter 242, Health and Safety Code and that is a veterans home as defined by the §164.002, Natural Resources Code, if the provider pharmacy is a United States Department of Veterans Affairs pharmacy or another federally operated pharmacy.

(C) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container, or quantities of unit dosed drugs, into another cartridge or container for dispensing by a pharmacist using an emergency medication kit.

(D) Provider pharmacy--The community pharmacy (Class A), the institutional pharmacy (Class C), the non-resident (Class E) pharmacy located not more than 20 miles from an institution licensed under Chapter 242 or 252, Health and Safety Code, or the United States Department of Veterans Affairs pharmacy or another federally operated pharmacy providing remote pharmacy services.

(E) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, in remote sites.

(F) Remote site--A facility not located at the same location as a Class A, Class C, Class E pharmacy or a United States Department of Affairs pharmacy or another federally operated pharmacy, at which remote pharmacy services are provided using an emergency medication kit.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using an emergency medication kit to an institution regulated under Chapter 242, or 252, Health and Safety Code.

(B) A provider pharmacy may provide remote pharmacy services at more than one remote site.

(C) A provider pharmacy shall not place an emergency medication kit in a remote site which already has a kit from another provider pharmacy except as provided by paragraph (4)(B)(iii) of this subsection.

(D) A provider pharmacy which is licensed as an institutional (Class C) or a non-resident (Class E) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title and this section.

(E) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the emergency medication kit located at the remote site including supervision of the emergency medication kit and compliance with this section.

(4) Operational standards.

(A) Application for permission to provide pharmacy services using an emergency medication kit.

(i) A Class A, Class C, or Class E Pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an emergency medication kit.

(ii) Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

(iii) Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the remote site.

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of:

(I) a remote site where an emergency medication kit is operated by the pharmacy; or

(II) a remote pharmacy service at a remote site.

(ii) A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site if controlled substances are maintained within an emergency medication kit at the facility.

(iii) If more than one provider pharmacy provides an emergency kit to a remote site, the provider pharmacies must enter into a written agreement as to the emergency medications supplied by each pharmacy. The provider pharmacies shall not duplicate drugs stored in the emergency medication kits. The written agreement shall include reasons why an additional pharmacy is required to meet the emergency medication needs of the residents of the institution.

(iv) A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 of this title.

(C) Environment/Security.

(i) Emergency medication kits shall have adequate security and procedures to:

(I) prohibit unauthorized access;

(II) comply with federal and state laws and regulations; and

(III) maintain patient confidentiality.

(ii) Access to the emergency medication kit shall be limited to pharmacists and licensed healthcare personnel employed by the facility.

(iii) Drugs shall be stored in compliance with the provisions of §291.15 and §291.33(f)(2) of this title including the requirements for temperature and handling outdated drugs.

(D) Prescription dispensing and delivery.

(i) Drugs in the emergency medication kit shall be accessed for administration to meet the emergency medication needs of a resident of the remote site pursuant to an order from a practitioner. The prescription drug order for the drugs used from the emergency medication kit shall be forwarded to the provider pharmacy in a manner authorized by §291.34(b) of this title.

(ii) The remote site shall notify the provider pharmacy of each entry into an emergency medication kit. Such notification shall meet the requirements of paragraph (5)(D)(ii) of this subsection.

(E) Drugs.

(i) The contents of an emergency medication kit:

(I) may consist of dangerous drugs and controlled substances; and

(II) shall be determined by the consultant pharmacist, pharmacist-in-charge of the provider pharmacy, medical director, and the director of nurses and limited to those drugs necessary to meet the resident's emergency medication needs. For the purpose of this subsection, this shall mean a situation in which a drug cannot be supplied by a pharmacy within a reasonable time period.

(ii) When deciding on the drugs to be placed in the emergency medication kit, the consultant pharmacist, pharmacist-in-charge of the provider pharmacy, medical director, and the director of nurses must determine, select, and record a prudent number of drugs for potential emergency incidents based on:

(I) clinical criteria applicable to each facility's demographics;

(II) the facility's census; and

(III) the facility's healthcare environment.

(iii) A current list of the drugs stored in each remote site's emergency medication kit shall be maintained by the provider pharmacy and a copy kept with the emergency medication kit.

(iv) An automated pharmacy system may be used as an emergency medication kit provided the system limits emergency access to only those drugs approved for the emergency medication kit.

(v) Drugs for use in an emergency medication kit shall be packaged in the original manufacturer's container or prepackaged in the provider pharmacy and labeled in compliance with the board's prepackaging requirements for the class of pharmacy.

(F) Stocking emergency medication kits.

(i) Stocking of drugs in an emergency medication kit shall be completed at the provider pharmacy or remote site by a pharmacist, pharmacy technician, or pharmacy technician trainee under the direct supervision of a pharmacist, except as provided in clause (ii) of this subparagraph.

(ii) If the emergency medication kit is an automated pharmacy system which uses bar-coding, microchip, or other technologies to ensure that the containers or unit dose drugs are accurately loaded, the prepackaging of the containers or unit dose drugs shall occur at the provider pharmacy unless provided by a FDA approved repackager. The prepackaged containers or unit dose drugs may be sent to the remote site to be loaded into the machine by personnel designated by the pharmacist-in-charge provided:

(I) a pharmacist verifies the container or unit dose drug has been properly filled and labeled;

(II) the individual containers or unit dose drugs are transported to the remote site in a secure, tamper-evident container; and

(III) the automated pharmacy system uses bar-coding, microchip, or other technologies to ensure that the containers or unit dose drugs are accurately loaded in the automated pharmacy system.

(iii) All drugs to be stocked in the emergency medication kit shall be delivered to the remote site by the provider pharmacy.

(G) Policies and procedures of operation.

(i) A provider pharmacy that provides pharmacy services through an emergency medication kit at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) duties which may only be performed by a pharmacist;

(II) a copy of the written contract or agreement between the pharmacy and the facility which outlines the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract in compliance with federal and state laws and regulations;

(III) date of last review/revision of the policy and procedure manual; and

(IV) policies and procedures for:

(-a-) security;

(-b-) operation of the emergency medication kit;

(-c-) preventative maintenance of the automated pharmacy system if the emergency medication kit is an automated pharmacy system;

(-d-) sanitation;

(-e-) storage of drugs;

(-f-) dispensing;

(-g-) supervision;

(-h-) drug procurement;

(-i-) receiving of drugs;

(-j-) delivery of drugs; and

(-k-) record keeping.

(ii) A pharmacy that provides pharmacy services through an emergency medication kit at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services using an emergency medication kit which is an automated pharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of the automated pharmacy system to provide emergency medications. The written plan for recovery shall include:

(I) planning and preparation for maintaining pharmacy services when an automated pharmacy system is experiencing downtime;

(II) procedures for response when an automated pharmacy system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The provider pharmacy shall maintain original prescription drug orders for drugs dispensed from an emergency medication kit in compliance with §291.34(b) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Records of dispensing. Dispensing records for a prescription drug order shall be maintained by the provider pharmacy in the manner required by §291.34(d) or (e) of this title.

(D) Transaction information.

(i) A prescription drug order shall be maintained by the provider pharmacy as the record of removal of a drug from an emergency medication kit for administration to a patient.

(ii) The remote site shall notify the provider pharmacy electronically or in writing of each entry into an emergency medication kit. Such notification may be included on the prescription drug order or a separate document and shall include the name, strength, and quantity of the drug removed, the time of removal, and the name of the person removing the drug.

(iii) A separate record of stocking, removal, or dispensing for administration from an emergency medication kit shall be maintained by the pharmacy and include the:

(I) date;

(II) name, strength, dosage form, and quantity of drug stocked, removed, or dispensed for administration;

(III) name, initials, or identification code of the person stocking, removing, or dispensing for administration, drugs from the system;

(IV) name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled; and

(V) unique prescription number assigned to the prescription drug order when the drug is administered to the patient.

(E) Inventory.

(i) A provider pharmacy shall:

(I) keep a record of all drugs sent to and returned from a remote site separate from the records of the provider pharmacy and from any other remote site's records; and

(II) keep a perpetual inventory of controlled substances and other drugs required to be inventoried under §291.17 of this title, that are received and dispensed or distributed from each remote site.

(ii) As specified in §291.17 of this title, a provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

(I) The inventory of each remote site and the provider pharmacy shall be taken on the same day.

(II) The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs of the provider pharmacy.

(c) Remote pharmacy services using telepharmacy systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a healthcare facility that is not at the same location as a Class A or Class C pharmacy through a telepharmacy system as outlined in §562.110 of the Texas Pharmacy Act.

(2) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings defined in the Act or §291.31 of this title.

(A) Provider pharmacy--

(i) a Class A pharmacy that provides pharmacy services through a telepharmacy system at a remote dispensing site or at a healthcare facility that is regulated by this state or the United States; or

(ii) a Class C pharmacy that provides pharmacy services though a telepharmacy system at a healthcare facility that is regulated by this state or the United States.

(B) Remote dispensing site--a location licensed as a telepharmacy that is authorized by a provider pharmacy through a telepharmacy system to store and dispense prescription drugs and devices, including dangerous drugs and controlled substances.

(C) Remote healthcare site--a healthcare facility regulated by this state or the United States that is a:

(i) rural health clinic regulated under 42 U.S.C. Section 1395x(aa);

(ii) health center as defined by 42 U.S.C. Section 254b;

(iii) healthcare facility located in a medically underserved area as determined by the United States Department of Health and Human Services;

(iv) healthcare facility located in a health professional shortage area as determined by the United States Department of Health and Human Services; or

(v) a federally qualified health center as defined by 42 U.S.C. Section 1396d(I)(2)(B).

(D) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, drug regimen review, and patient counseling, at a remote site.

(E) Remote site--a remote healthcare site or a remote dispensing site.

(F) Still image capture--A specific image captured electronically from a video or other image capture device.

(G) Store and forward--A video or still image record which is saved electronically for future review.

(H) Telepharmacy system--A system that monitors the dispensing of prescription drugs and provides for related drug use review and patient counseling services by an electronic method which shall include the use of the following types of technology:

(i) audio and video;

(ii) still image capture; and

(iii) store and forward.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using a telepharmacy system at a:

(i) remote healthcare site; or

(ii) remote dispensing site.

(B) A provider pharmacy may not provide remote pharmacy services at a remote healthcare site if a Class A or Class C pharmacy that dispenses prescription drug orders to out-patients is located in the same community, unless the remote healthcare site is a federally qualified health center as defined by 42 U.S.C. Section 1396d(I)(2)(B). For the purposes of this subsection a community is defined as:

(i) the census tract in which the remote site is located, if the remote site is located in a Metropolitan Statistical Area (MSA) as defined by the United States Census Bureau in the most recent U.S. Census; or

(ii) within 10 miles of the remote site, if the remote site is not located in a MSA.

(C) A provider pharmacy may not provide remote pharmacy services at a remote dispensing site if a Class A pharmacy is located within 22 miles by road of the remote dispensing site.

(D) If a Class A or Class C pharmacy is established in a community in which a remote healthcare site has been located, the remote healthcare site may continue to operate.

(E) If a Class A pharmacy is established within 22 miles by road of a remote dispensing site that is currently operating, the remote dispensing site may continue to operate at that location.

(F) Before providing remote pharmacy services, the telepharmacy system at the remote site must be tested by the provider pharmacy and found to operate properly. The provider pharmacy shall make the results of such testing available to the board upon request.

(G) A provider pharmacy which is licensed as a Class C pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title and this section.

(H) A provider pharmacy can only provide pharmacy services at no more than two remote dispensing sites.

(4) Personnel.

(A) The pharmacist-in-charge of the provider pharmacy is responsible for all operations at the remote site including supervision of the telepharmacy system and compliance with this section.

(B) The provider pharmacy shall have sufficient pharmacists on duty such that each pharmacist may supervise no more two remote sites that are simultaneously open to provide services.

(C) The following duties shall be performed only by a pharmacist at the provider pharmacy:

(i) receiving an oral prescription drug order for a controlled substance;

(ii) interpreting the prescription drug order;

(iii) verifying the accuracy of prescription data entry;

(iv) selecting the drug product to be stored and dispensed at the remote site;

(v) interpreting the patient's medication record and conducting a drug regimen review;

(vi) authorizing the telepharmacy system to print a prescription label at the remote site;

(vii) performing the final check of the dispensed prescription to ensure that the prescription drug order has been dispensed accurately as prescribed; and

(viii) counseling the patient.

(D) A pharmacy technician at the remote site may receive an oral prescription drug order for a dangerous drug.

(5) Operational standards.

(A) Application to provide remote pharmacy services using a telepharmacy system.

(i) A Class A or class C Pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using a telepharmacy system.

(ii) Such application shall be resubmitted every two years in conjunction with the renewal of the provider pharmacy's license.

(iii) On approval of the application, the provider pharmacy will be sent a license for the remote site, which must be displayed at the remote site.

(iv) If the average number of prescriptions dispensed each day at a remote dispensing site is open for business is more than 125 prescriptions, as calculated each calendar year, the remote dispensing site shall apply for a Class A pharmacy license as specified in §291.1 of this title (relating to Pharmacy License Application).

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of a remote site where a telepharmacy system is operated by the pharmacy.

(ii) A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site, if controlled substances are maintained.

(iii) A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 of this title.

(C) Environment/Security.

(i) A remote site shall be under the continuous supervision of a provider pharmacy pharmacist at all times the site is open to provide pharmacy services. To qualify as continuous supervision, the pharmacist is not required to be physically present at the remote site and shall supervise electronically through the use of the following types of technology:

(I) audio and video;

(II) still image capture; and

(III) store and forward.

(ii) Drugs shall be stored in compliance with the provisions of §291.15 and §291.33(f)(2) of this title including the requirements for temperature and handling of outdated drugs.

(iii) Drugs for use in the telepharmacy system at a remote healthcare site shall be stored in an area that is:

(I) separate from any other drugs used by the healthcare facility; and

(II) locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized personnel.

(iv) Drugs for use in the telepharmacy system at a remote dispensing site shall be stored in an area that is locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized personnel.

(v) Access to the area where drugs are stored at the remote site and operation of the telepharmacy system shall be limited to:

(I) pharmacists employed by the provider pharmacy;

(II) licensed healthcare providers, if the remote site is a remote healthcare site; and

(III) pharmacy technicians;

(vi) Individuals authorized to access the remote site and operate the telepharmacy system shall:

(I) be designated in writing by the pharmacist-in-charge; and

(II) have completed documented training concerning their duties associated with the telepharmacy pharmacy system.

(vii) Remote sites shall have adequate security and procedures to:

(I) comply with federal and state laws and regulations; and

(II) maintain patient confidentiality.

(D) Prescription dispensing and delivery.

(i) A pharmacist at the provider pharmacy shall conduct a drug regimen review as specified in §291.33(c) of this title prior to delivery of the dispensed prescription to the patient or patient's agent.

(ii) The dispensed prescription shall be labeled at the remote site with the information specified in §291.33(c) of this title.

(iii) A pharmacist at the provider pharmacy shall perform the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed. This final check shall be accomplished through a visual check using electronic methods.

(iv) A pharmacist at the provider pharmacy shall counsel the patient or patient's agent as specified in §291.33(c) of this title. This counseling may be performed using electronic methods. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(v) If the remote site has direct access to the provider pharmacy's data processing system, only a pharmacist or pharmacy technician may enter prescription information into the data processing system.

(vi) Drugs which require reconstitution through the addition of a specified amount of water may be dispensed by the remote site only if a pharmacy technician, pharmacy technician trainee, or licensed healthcare provider reconstitutes the product.

(vii) A telepharmacy system located at a remote dispensing site may not dispense a schedule II controlled substance.

(viii) Drugs dispensed at the remote site through a telepharmacy system shall only be delivered to the patient or patient's agent at the remote site.

(E) Quality assurance program. A pharmacy that provides remote pharmacy services through a telepharmacy system at a remote site shall operate according to a written program for quality assurance of the telepharmacy system which:

(i) requires continuous supervision of the telepharmacy system at all times the site is open to provide remote pharmacy services; and

(ii) establishes mechanisms and procedures to routinely test the operation of the telepharmacy system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(F) Policies and procedures.

(i) A pharmacy that provides pharmacy services through a telepharmacy system at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) a current list of the name and address of the pharmacist-in-charge and personnel designated by the pharmacist-in-charge to have:

(-a-) have access to the area where drugs are stored at the remote site; and

(-b-) operate the telepharmacy system;

(II) duties which may only be performed by a pharmacist;

(III) if the remote site is located at a remote healthcare site, a copy of the written contact or agreement between the provider pharmacy and the healthcare facility which outlines the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract or agreement in compliance with federal and state laws and regulations;

(IV) date of last review/revision of policy and procedure manual; and

(V) policies and procedures for:

(-a-) security;
(-b-) operation of the telepharmacy system;
(-c-) sanitation;
(-d-) storage of drugs;
(-e-) dispensing;
(-f-) supervision;
(-g-) drug and/or device procurement;
(-h-) receiving of drugs and/or devices;
(-i-) delivery of drugs and/or devices; and
(-j-) recordkeeping

(ii) A pharmacy that provides remote pharmacy services through a telepharmacy system at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services through a telepharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of a pharmacist to electronically supervise the telepharmacy system and the dispensing of prescription drugs at the remote site. The written plan for recovery shall include:

(I) a statement that prescription drugs shall not be dispensed at the remote site, if a pharmacist is not able to electronically supervise the telepharmacy system and the dispensing of prescription drugs;

(II) procedures for response when a telepharmacy system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(6) Additional operational standards for remote dispensing sites.

(A) A pharmacist employed by a provider pharmacy shall make at least monthly on-site visits to a remote site. The remote site shall maintain documentation of the visit.

(B) A pharmacist employed by a provider pharmacy shall be physically present at a remote dispensing site when the pharmacist is providing services requiring the physical presence of the pharmacist, including immunizations.

(C) A remote dispensing site shall be staffed by an on-site pharmacy technician who is under the continuous supervision of a pharmacist employed by the provider pharmacy.

(D) All pharmacy technicians at a remote dispensing site shall be counted for the purpose of establishing the pharmacist-pharmacy technician ratio of the provider pharmacy which, notwithstanding Section 568.006 of the Act, may not exceed three pharmacy technicians for each pharmacist providing supervision.

(E) A pharmacy technician working at a remote dispensing site must:

(i) have worked at least one year at a retail pharmacy during the three years preceding the date the pharmacy technician begins working at the remote dispensing site; and

(ii) have completed a training program on the proper use of a telepharmacy system.

(F) A pharmacy technician at a remote dispensing site may not perform sterile or nonsterile compounding. However, a pharmacy technician may prepare commercially available medications for dispensing, including the reconstitution of orally administered powder antibiotics.

(7) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) accessible by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The remote site shall maintain original prescription drug orders for medications dispensed from a remote site using a telepharmacy system in the manner required by §291.34(b) of this title and the provider pharmacy shall have electronic access to all prescription records.

(iii) If prescription drug records are maintained in a data processing system, the system shall have a workable (electronic) data retention system which can produce a separate audit trail of drug usage by the provider pharmacy and by each remote site for the preceding two years as specified in §291.34(e) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Patient medication records. Patient medication records shall be created and maintained at the remote site or provider pharmacy in the manner required by §291.34(c) of this title. If such records are maintained at the remote site, the provider pharmacy shall have electronic access to those records.

(D) Inventory.

(i) A provider pharmacy shall:

(I) keep a record of all drugs ordered and dispensed by a remote site separate from the records of the provider pharmacy and from any other remote site's records;

(II) keep a perpetual inventory of all controlled substances that are received and dispensed or distributed from each remote site. The perpetual inventory shall be reconciled, by a pharmacist employed by the provider pharmacy, at least monthly.

(ii) As specified in §291.17 of this title. A provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

(I) The inventory of each remote site and the provider pharmacy shall be taken on the same day.

(II) The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs at the provider pharmacy.

(III) A copy of the inventory of the remote site shall be maintained at the remote site.

(d) Remote pharmacy services using automated storage and delivery systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C

pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an automated storage and delivery system.

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

(A) Automated storage and delivery system--A mechanical system that delivers dispensed prescription drugs to patients at a remote delivery site and maintains related transaction information.

(B) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(C) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(D) Provider pharmacy--The community pharmacy (Class A) or the institutional pharmacy (Class C) providing remote pharmacy services.

(E) Remote delivery site--A location at which remote pharmacy services are provided using an automated storage and delivery system.

(F) Remote pharmacy service--The provision of pharmacy services, including the storage and delivery of prescription drugs, in remote delivery sites.

(3) General requirements for a provider pharmacy to provide remote pharmacy services using an automated storage and delivery system to deliver a previously verified prescription that is dispensed by the provider pharmacy to a patient or patient's agent.

(A) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the automated storage and delivery system located at the remote delivery site including supervision of the automated storage and delivery system and compliance with this section.

(B) The patient or patient's agent shall receive counseling via a direct link to audio or video communication by a Texas licensed pharmacist who has access to the complete patient medication record (patient profile) maintained by the provider pharmacy prior to the release of any new prescription released from the system.

(C) A pharmacist shall be accessible at all times to respond to patients' or other health professionals' questions and needs pertaining to drugs delivered through the use of the automated storage and delivery system. Such access may be through a 24 hour pager service or telephone which is answered 24 hours a day.

(D) The patient or patient's agent shall be given the option whether to use the system.

(E) An electronic notice shall be provided to the patient or patient's agent at the remote delivery site with the following information:

(i) the name and address of the pharmacy that verified the previously dispensed prescription; and

(ii) a statement that a pharmacist is available 24 hours a day, 7 days a week through the use of telephonic communication.

(F) Drugs stored in the automated storage and distribution system shall be stored at proper temperatures, as defined in the USP/NF and §291.15 of this title (relating to Storage of Drugs).

(G) A provider pharmacy may only provide remote pharmacy services using an automated storage and delivery system to patients at a board-approved remote delivery site.

(H) A provider pharmacy may provide remote pharmacy services at more than one remote delivery site.

(I) Before providing remote pharmacy services, the automated storage and delivery system at the remote delivery site must be tested by the provider pharmacy and found to deliver accurately. The provider pharmacy shall make the results of such testing available to the board upon request.

(J) A provider pharmacy which is licensed as an institutional (Class C) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title (relating to Definitions, Personnel, Operational Standards, and Records for Class A (Community) Pharmacies) and this section.

(4) Operational standards.

(A) Application to provide remote pharmacy services using an automated storage and delivery system.

(i) A community (Class A) or institutional (Class C) pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an automated storage and delivery system.

(ii) Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

(iii) Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the provider pharmacy.

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service.

(ii) A provider pharmacy shall comply with appropriate controlled substance registrations for each remote delivery site if dispensed controlled substances are maintained within an automated storage and delivery system at the facility.

(iii) A provider pharmacy shall file an application for change of location and/or name of a remote delivery site as specified in §291.3 of this title (relating to Notifications).

(C) Environment/Security.

(i) A provider pharmacy shall only store dispensed drugs at a remote delivery site within an automated storage and delivery system which is locked by key, combination or other mechanical or electronic means so as to prohibit access by unauthorized personnel.

(ii) Access to the automated storage and delivery system shall be limited to pharmacists, and pharmacy technicians or pharmacy technician trainees under the direct supervision of a pharmacist who:

(I) are designated in writing by the pharmacist-in-charge; and

(II) have completed documented training concerning their duties associated with the automated storage and delivery system.

(iii) Drugs shall be stored in compliance with the provisions of §291.15 (relating to Storage of Drugs) and §291.33(c)(8) (relating to Returning Undelivered Medication to Stock) of this title, including the requirements for temperature and the return of undelivered medication to stock.

(iv) the automated storage and delivery system must have an adequate security system, including security camera(s), to prevent unauthorized access and to maintain patient confidentiality.

(D) Stocking an automated storage and delivery system. Stocking of dispensed prescriptions in an automated storage and delivery system shall be completed under the supervision of a pharmacist.

(E) Quality assurance program. A pharmacy that provides pharmacy services through an automated storage and delivery system at a remote delivery site shall operate according to a written program for quality assurance of the automated storage and delivery system which:

(i) requires continuous supervision of the automated storage and delivery system; and

(ii) establishes mechanisms and procedures to routinely test the accuracy of the automated storage and delivery system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(F) Policies and procedures of operation.

(i) A pharmacy that provides pharmacy services through an automated storage and delivery system at a remote delivery site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) a current list of the names and addresses of the pharmacist-in-charge and all personnel designated by the pharmacist-in-charge to have access to the dispensed drugs stored in the automated storage and delivery system;

(II) duties which may only be performed by a pharmacist;

(III) a copy of the portion of the written contract or lease agreement between the pharmacy and the remote delivery site location which outlines the services to be provided and the responsibilities and accountabilities of each party relating to the operation of the automated storage and delivery system in fulfilling the terms of the contract in compliance with federal and state laws and regulations;

(IV) date of last review/revision of the policy and procedure manual; and

(V) policies and procedures for:

(-a-) security;

(-b-) operation of the automated storage and delivery system;

(-c-) preventative maintenance of the automated storage and delivery system;

(-d-) sanitation;

(-e-) storage of dispensed drugs;

(-f-) supervision;

(-g-) delivery of dispensed drugs; and

(-h-) record keeping.

(ii) A pharmacy that provides pharmacy services through an automated storage and delivery system at a remote delivery site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services using an automated storage and delivery system shall maintain a written plan for recovery from an event which interrupts the ability of the automated storage and delivery system to deliver dispensed prescription drugs. The written plan for recovery shall include:

(I) planning and preparation for maintaining pharmacy services when an automated storage and delivery system is experiencing downtime;

(II) procedures for response when an automated storage and delivery system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The provider pharmacy shall have a workable (electronic) data retention system which can produce a separate audit trail of drug delivery and retrieval transactions at each remote delivery site for the preceding two years.

(B) Transaction information.

(i) The automated storage and delivery system shall electronically record all transactions involving drugs stored in, removed, or delivered from the system.

(ii) Records of delivery from an automated storage and delivery system for a patient shall be maintained by the provider pharmacy and include the:

(I) identity of the system accessed;

(II) identification of the individual accessing the system;

(III) date of transaction;

(IV) prescription number, drug name, strength, dosage form;

(V) number of prescriptions retrieved;

(VI) name of the patient for whom the prescription was retrieved;

(VII) name of prescribing practitioner; and

(VIII) name of pharmacist responsible for consultation with the patient, if required, and documentation that the consultation was performed.

(iii) Records of stocking or removal from an automated storage and delivery system shall be maintained by the pharmacy and include the:

(I) date;

(II) prescription number;

(III) name of the patient;

(IV) drug name;

(V) number of dispensed prescription packages stocked or removed;

(VI) name, initials, or identification code of the person stocking or removing dispensed prescription packages from the system; and

(VII) name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled;

(C) the pharmacy shall make the automated storage and delivery system and any records of the system, including testing records, available for inspection by the board; and

(D) the automated storage and delivery system records a digital image of the individual accessing the system to pick-up a prescription and such record is maintained by the pharmacy for two years.

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 September 14, 2020.

TRD-202003771
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-8010

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22 TAC §291.129

The Texas State Board of Pharmacy proposes amendments to §291.129, concerning Satellite Pharmacy. The amendments, if adopted, expand the nonjudgmental duties that may be performed by pharmacy technicians and eliminate the ratio of pharmacists to pharmacy technicians and pharmacy technician trainees.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide pharmacists with the ability to focus more on patient care by allowing pharmacy technicians to perform more nonjudgmental duties and providing more flexibility in the staffing of pharmacy technicians to better serve the needs of the pharmacy's patients. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.129. Satellite Pharmacy.

(a) Purpose. The purpose of this section is to create a new class of pharmacy for the provision of pharmacy services by a Class A or Class C pharmacy in a location that is not at the same location as the Class A or Class C pharmacy through a satellite pharmacy and to provide standards for the operation of this class of pharmacy established under §560.053 of the Texas Pharmacy Act.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings as defined in the Act or in §291.31 of this title (relating to Definitions).

(1) Provider pharmacy--The Class A or Class C pharmacy providing satellite pharmacy services.

(2) Satellite pharmacy--A facility not located at the same location as a Class A or Class C pharmacy at which satellite pharmacy services are provided.

(3) Satellite pharmacy services--The provision of pharmacy services, including the storage and delivery of prescription drugs, in an alternate location.

(c) General requirements.

(1) A Class A or Class C provider pharmacy may establish a satellite pharmacy in a location that is not at the same location as the Class A or Class C pharmacy.

(2) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the satellite pharmacy including supervision of satellite pharmacy personnel and compliance with this section.

(3) A satellite pharmacy may not store bulk drugs and may only store prescription medications that have been previously verified and dispensed by the provider pharmacy.

(4) A Class C pharmacy that is a provider pharmacy dispensing outpatient prescriptions for a satellite pharmacy shall comply with the provisions of §§291.31 - 291.34 of this title (relating to Definitions, Personnel, Operational Standards, and Records for Class A (Community) pharmacies) and this section.

(5) The provider pharmacy and the satellite pharmacy must have:

(A) the same owner; and

(B) share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to process a non-dispensing function.

(d) Personnel.

(1) All individuals working at the satellite pharmacy shall be employees of the provider pharmacy and must report their employment to the board as such.

(2) A satellite pharmacy shall have sufficient pharmacists on duty to operate the satellite pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(3) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and pharmacy technician trainees and for designating and delegating duties, other than those listed in paragraph (7) of this subsection, to pharmacy technicians and pharmacy technician trainees. Each pharmacist:

(A) shall verify the accuracy of all acts, tasks, and functions performed by pharmacy technicians and pharmacy technician trainees; and

(B) shall be responsible for any delegated act performed by pharmacy technicians and pharmacy technician trainees under his or her supervision.

(4) A pharmacist shall be physically present to directly supervise a pharmacy technician or pharmacy technician trainee who is entering prescription data into the data processing system. Each prescription entered into the data processing system shall be verified at the time of data entry.

(5) All pharmacists, while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(6) A pharmacist shall ensure that the drug is dispensed and delivered safely and accurately as prescribed. A pharmacist shall ensure the safety and accuracy of the portion of the process the pharmacist is performing.

(7) Duties in a satellite pharmacy that may only be performed by a pharmacist are as follows:

(A) receiving oral prescription drug orders for controlled substances and reducing these orders to writing, either manually or electronically;

(B) interpreting or clarifying prescription drug orders;

(C) communicating to the patient or patient's agent information about the prescription drug or device, which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, as specified in §291.33(c) of this title;

(D) communicating to the patient or the patient's agent on his or her request for information concerning any prescription drugs dispensed to the patient by the pharmacy;

(E) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(F) interpreting patient medication records and performing drug regimen reviews; and

(G) performing a specific act of drug therapy management for a patient when delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with the Medical Practice Act.

(8) Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in paragraph (7) of this subsection. However, a pharmacist may delegate to pharmacy technicians and pharmacy technician trainees any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(A) a pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians and pharmacy technician trainees; and

(B) pharmacy technicians and pharmacy technician trainees are under the direct supervision of, and responsible to, a pharmacist.

(9) Pharmacy technicians and pharmacy technician trainees in a satellite pharmacy may perform only nonjudgmental technical duties associated with the preparation and distribution of prescription drugs as follows:

(A) initiating and receiving refill authorization requests;

(B) entering prescription data into a data processing system; and

(C) reconstituting medications.

(10) In addition to the duties listed above in paragraph (9) of this subsection, pharmacy technicians may perform the following nonjudgmental technical duties associated with the preparation and distribution of prescription drugs:

(A) receiving oral prescription drug orders for dangerous drugs and reducing these orders to writing, either manually or electronically; and

(B) transferring or receiving a transfer of original prescription information for a dangerous drug on behalf of a patient.

~~[(10) In a satellite pharmacy, the ratio of pharmacists to pharmacy technicians/pharmacy technician trainees may be 1:3, provided at least one of the three is a pharmacy technician and not a pharmacy technician trainee.]~~

(11) All satellite pharmacy personnel shall wear identification tags or badges that bear the person's name and identifies him or her as a pharmacist, pharmacist intern, pharmacy technician, or pharmacy technician trainee.

(e) Operational requirements.

(1) Application for permission to provide satellite pharmacy services.

(A) A Class A or Class C pharmacy shall make an application to the board to provide satellite pharmacy services. The application shall include the following:

(i) the name, address, and license number of the provider pharmacy;

(ii) the name and address of the facility where the satellite pharmacy will be located;

(iii) the anticipated date of opening and hours of operation; and

(iv) a copy of the lease agreement or, if the location of the satellite pharmacy is owned by the applicant, a notarized statement certifying such location ownership.

(B) A renewal application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license. The renewal application shall contain the documentation required in subparagraph (A) of this paragraph.

(C) Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the satellite pharmacy.

(2) Notification requirements.

(A) A provider pharmacy shall notify the board in writing within ten days of a change of location, discontinuance of service, or closure of a satellite pharmacy that is operated by the pharmacy.

(B) A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each satellite pharmacy if controlled substances are maintained at the satellite pharmacy.

(3) Environment.

(A) The satellite pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be clean and in good operating condition.

(B) A satellite pharmacy shall contain an area which is suitable for confidential patient counseling.

(i) Such counseling area shall:

(I) be easily accessible to both the patient and pharmacists and not allow patient access to prescription drugs; and

(II) be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(ii) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(I) the proximity of the counseling area to the check-out or cash register area;

(II) the volume of pedestrian traffic in and around the counseling area;

(III) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(IV) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(C) The satellite pharmacy shall be properly lighted and ventilated.

(D) The temperature of the satellite pharmacy shall be maintained within a range compatible with the proper storage of drugs in compliance with the provisions of §291.15 of this title (relating to Storage of Drugs). The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(E) Animals, including birds and reptiles, shall not be kept within the pharmacy and in immediately adjacent areas under the control of the pharmacy. This provision does not apply to fish in aquariums, guide dogs accompanying disabled persons, or animals for sale to the general public in a separate area that is inspected by local health jurisdictions.

(4) Security.

(A) A satellite pharmacy shall be under the continuous, physically present supervision of a pharmacist at all times the satellite pharmacy is open to provide pharmacy services.

(B) The satellite pharmacy shall be enclosed by walls, partitions or other means of floor-to-ceiling enclosure. In addition to the security requirements outlined in §291.33(b)(2) of this title, satellite pharmacies shall have adequate security and procedures to:

(i) prohibit unauthorized access;

(ii) comply with federal and state regulations; and

(iii) maintain patient confidentiality.

(C) Access to the satellite pharmacy shall be limited to pharmacists, pharmacy technicians, and pharmacy technician trainees employed by the provider pharmacy and who are designated in writing by the pharmacist-in-charge.

(D) The provider pharmacy shall have procedures that specify that prescriptions may only be delivered to the satellite pharmacy by the provider pharmacy and shall:

(i) be delivered in a sealed container with a list of the prescriptions delivered;

(ii) be signed for on receipt by the pharmacist at the satellite pharmacy; and

(iii) be checked by personnel designated by the pharmacist-in-charge to verify that the prescriptions sent by the provider pharmacy were actually received. The designated person who checks the order shall document the verification by signing and dating the list of prescriptions delivered.

(5) Prescription dispensing and delivery. A satellite pharmacy shall comply with the requirements outlined in §291.33(c) of this title with regard to prescription dispensing and delivery.

(6) Equipment and supplies. A satellite pharmacy shall have the following equipment and supplies:

(A) typewriter or comparable equipment;

(B) refrigerator, if storing drugs requiring refrigeration; and

(C) metric-apothecary weight and measure conversion charts.

(7) Library. A reference library shall be maintained by the satellite pharmacy that includes the following in hard-copy or electronic format:

(A) current copies of the following:

(i) Texas Pharmacy Act and rules;

(ii) Texas Dangerous Drug Act and rules;

(iii) Texas Controlled Substances Act and rules; and

(iv) Federal Controlled Substances Act and rules (or official publication describing the requirements of the Federal Controlled Substances Act and rules);

(B) at least one current or updated reference from each of the following categories:

(i) patient information:

(I) United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient); or

(II) a reference text or information leaflets which provide patient information;

(ii) drug interactions: a reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the satellite pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(iii) a general information reference text, such as:

(I) Facts and Comparisons with current supplements;

(II) United States Pharmacopeia Dispensing Information Volume I (Drug Information for the Healthcare Provider);

(III) Clinical Pharmacology;

(IV) American Hospital Formulary Service with current supplements; or

(V) Remington's Pharmaceutical Sciences; and

(C) basic antidote information and the telephone number of the nearest Regional Poison Control Center.

(f) Records.

(1) Maintenance of records.

(A) Every record required to be kept under §291.34 of this title and under this section shall be:

(i) kept by the provider pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(ii) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the board. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(B) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(i) the records maintained in the alternative system contain all of the information required on the manual record; and

(ii) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(C) Prescription drug orders shall be maintained by the provider pharmacy in the manner required by §291.34(d) or (e) of this title.

(2) Prescriptions.

(A) Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(B) The provider pharmacy must maintain appropriate records to identify the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performed any processing at the satellite pharmacy.

(C) A provider pharmacy shall keep a record of all prescriptions sent and returned between the pharmacies separate from the records of the provider pharmacy and from any other satellite pharmacy's records.

(D) A satellite pharmacy shall keep a record of all prescriptions received and returned between the pharmacies.

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 September 14, 2020.

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Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8010

SUBCHAPTER H. OTHER CLASSES OF PHARMACY

22 TAC §291.153

The Texas State Board of Pharmacy proposes amendments to §291.153, concerning Central Prescription Drug or Medication Order Processing Pharmacy (Class G). The amendments, if adopted, expand the nonjudgmental duties that may be performed by pharmacy technicians.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide pharmacists with the ability to focus more on patient care by allowing pharmacy technicians to perform more nonjudgmental duties. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.153. Central Prescription Drug or Medication Order Processing Pharmacy (Class G).

(a) Purpose.

(1) The purpose of this section is to provide standards for a centralized prescription drug or medication order processing pharmacy.

(2) Any facility established for the primary purpose of processing prescription drug or medication drug orders shall be licensed as a Class G pharmacy under the Act. A Class G pharmacy shall not store bulk drugs or dispense a prescription drug order. Nothing in this subsection shall prohibit an individual pharmacist employee, individual pharmacy technician employee, or individual pharmacy technician trainee employee who is licensed in Texas from remotely accessing the pharmacy's electronic database from a location other than a licensed pharmacy in order to process prescription or medication drug orders, provided the pharmacy establishes controls to protect the privacy and security of confidential records, and the Texas-licensed pharmacist, pharmacy technician, or pharmacy technician trainee does not engage in the receiving of written prescription or medication orders or the maintenance of prescription or medication drug orders at the non-licensed remote location.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set out in the Act.

(1) Centralized prescription drug or medication order processing--The processing of prescription drug or medication orders by a Class G pharmacy on behalf of another pharmacy, a health care provider, or a payor. Centralized prescription drug or medication order processing does not include the dispensing of a prescription drug but includes any of the following:

(A) receiving, interpreting, or clarifying prescription drug or medication orders;

(B) data entering and transferring of prescription drug or medication order information;

(C) performing drug regimen review;

(D) obtaining refill and substitution authorizations;

(E) verifying accurate prescription data entry;

(F) interpreting clinical data for prior authorization for dispensing;

(G) performing therapeutic interventions; and

(H) providing drug information concerning a patient's prescription.

(2) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. Each Class G pharmacy shall have one pharmacist-in-charge who is employed on a full-time basis, who may be the pharmacist-in-charge for only one such pharmacy.

(B) Responsibilities. The pharmacist-in-charge shall have responsibility for the practice of pharmacy at the pharmacy for which he or she is the pharmacist-in-charge. The pharmacist-in-charge may advise the owner on administrative or operational concerns. The pharmacist-in-charge shall have responsibility for, at a minimum, the following:

(i) educating and training pharmacy technicians and pharmacy technician trainees;

(ii) maintaining records of all transactions of the Class G pharmacy required by applicable state and federal laws and regulations;

(iii) adhering to policies and procedures regarding the maintenance of records in a data processing system such that the data processing system is in compliance with Class G pharmacy requirements; and

(iv) legally operating the pharmacy, including meeting all inspection and other requirements of all state and federal laws or regulations governing the practice of pharmacy.

(2) Owner. The owner of a Class G pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(B) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(3) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the Class G pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities.

(iii) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and pharmacy technician trainees and for designating and delegating duties, other than those listed in subparagraph (B) of this paragraph, to pharmacy technicians and pharmacy technician trainees. Each pharmacist shall be responsible for any delegated act performed by pharmacy technicians and pharmacy technician trainees under his or her supervision.

(iv) Pharmacists shall directly supervise pharmacy technicians and pharmacy technician trainees who are entering prescription data into the pharmacy's data processing system by one of the following methods.

(I) Physically present supervision. A pharmacist shall be physically present to directly supervise a pharmacy technician or pharmacy technician trainee who is entering prescription order or medication order data into the data processing system. Each prescription or medication order entered into the data processing system shall be verified at the time of data entry.

(II) Electronic supervision. A pharmacist may electronically supervise a pharmacy technician or pharmacy technician trainee who is entering prescription order or medication order data into the data processing system provided the pharmacist:

(-a-) has the ability to immediately communicate directly with the technician/trainee;

(-b-) has immediate access to any original document containing prescription or medication order information or other information related to the dispensing of the prescription or medication order. Such access may be through imaging technology provided the pharmacist has the ability to review the original, hardcopy documents if needed for clarification; and

(-c-) verifies the accuracy of the data entered information prior to the release of the information to the system for storage.

(III) Electronic verification of data entry by pharmacy technicians or pharmacy technician trainees. A pharmacist may electronically verify the data entry of prescription information into a data processing system provided:

(-a-) the pharmacist has the ability to immediately communicate directly with the technician/trainee;

(-b-) the pharmacist electronically conducting the verification is either a:

(-1-) Texas licensed pharmacist; or

(-2-) pharmacist employed by a Class E pharmacy that has the same owner as the Class G pharmacy where the pharmacy technicians/trainees are located, or that has entered into a written contract or agreement with the Class G pharmacy which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations;

(-c-) the pharmacy establishes controls to protect the privacy and security of confidential records; and

(-d-) the pharmacy keeps permanent records of prescriptions electronically verified for a period of two years.

(v) All pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(B) Duties. Duties which may only be performed by a pharmacist are as follows:

(i) receiving oral prescription drug or medication orders for controlled substances and reducing these orders to writing, either manually or electronically;

(ii) interpreting prescription drug or medication orders;

(iii) selecting drug products;

(iv) verifying the data entry of the prescription drug or medication order information at the time of data entry prior to the release of the information to a Class A, Class C, or Class E pharmacy for dispensing;

(v) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant, as specified in §291.33(c) of this title (relating to Operational Standards);

(vi) communicating to the patient or the patient's agent on his or her request information concerning any prescription drugs dispensed to the patient by the pharmacy;

(vii) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records; and

(viii) interpreting patient medication records and performing drug regimen reviews.

(4) Pharmacy Technicians and Pharmacy Technician Trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Duties.

(i) Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in paragraph (3)(B) of this subsection.

(ii) A pharmacist may delegate to pharmacy technicians and pharmacy technician trainees any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(I) a pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians and pharmacy technician trainees; and

(II) pharmacy technicians and pharmacy technician trainees are under the direct supervision of and responsible to a pharmacist. [; and]

(iii) Pharmacy technicians and pharmacy technician trainees may perform only nonjudgmental technical duties associated with the preparation of prescription drugs, as follows:

(I) initiating and receiving refill authorization requests; and

(II) entering prescription or medication order data into a data processing system.

(iv) In addition to the duties listed above in clause (iii) of this subparagraph, pharmacy technicians may perform the following nonjudgmental technical duties associated with the preparation and distribution of prescription drugs:

(I) receiving oral prescription drug or medication orders for dangerous drugs and reducing these orders to writing, either manually or electronically; and

(II) transferring or receiving a transfer of original prescription drug or medication order information for a dangerous drug on behalf of a patient.

~~[(C) Ratio of on-site pharmacists to pharmacy technicians and pharmacy technician trainees. A Class G pharmacy may have a ratio of on-site pharmacists to pharmacy technicians and pharmacy technician trainees of 1:8 provided:]~~

~~*[(i)* at least seven are pharmacy technicians and not pharmacy technician trainees; and]~~

~~*[(ii)* the pharmacy has written policies and procedures regarding the supervision of pharmacy technicians and pharmacy technician trainees.]~~

(5) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows.

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician, or a certified pharmacy technician, if the technician maintains current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the board.

(B) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(C) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(D) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

(d) Operational Standards.

(1) General requirements.

(A) A Class A, Class C, or Class E Pharmacy may outsource prescription drug or medication order processing to a Class G pharmacy provided the pharmacies:

(i) have:

(I) the same owner; or

(II) entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations; and

(ii) share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to perform a non-dispensing function.

(B) A Class G pharmacy shall comply with the provisions applicable to the class of pharmacy contained in §§291.31 - 291.35 of this title (relating to Definitions, Personnel, Operational Standards, Records, and Official Prescription Requirements in a Class A (Community) Pharmacy), §§291.72 - 291.75 of this title (relating to Definitions, Personnel, Operational Standards, and Records in a Class C (Institutional) Pharmacy), or §§291.102 - 291.105 of this title (relating to Definitions, Personnel, Operational Standards, and Records in a Class E (Non-Resident) Pharmacy) to the extent applicable for the specific processing activity and this section including:

(i) duties which must be performed by a pharmacist; and

(ii) supervision requirements for pharmacy technicians and pharmacy technician trainees.

(2) Licensing requirements.

(A) A Class G pharmacy shall register with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(B) A Class G pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(C) A Class G pharmacy which changes location and/or name shall notify the board of the change within 10 days and file for an amended license as specified in §291.3 of this title.

(D) A Class G pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change, following the procedures in §291.3 of this title.

(E) A Class G pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(F) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance and renewal of a license and the issuance of an amended license.

(G) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(3) Environment.

(A) General requirements.

(i) The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition.

(ii) The pharmacy shall be properly lighted and ventilated.

(iii) The pharmacy is not required to have a sink exclusive of restroom facilities.

(B) Security.

(i) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provi-

sions for effective control against theft or diversion of prescription drug records.

(ii) Pharmacies shall employ appropriate measures to ensure that security of prescription drug records is maintained at all times to prohibit unauthorized access.

(4) Policy and Procedures. A policy and procedure manual shall be maintained by the Class G pharmacy and be available for inspection. The manual shall:

(A) outline the responsibilities of each of the pharmacies;

(B) include a list of the name, address, telephone numbers, and all license/registration numbers of the pharmacies involved in centralized prescription drug or medication order processing; and

(C) include policies and procedures for:

(i) protecting the confidentiality and integrity of patient information;

(ii) maintaining appropriate records to identify the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who performed any processing;

(iii) complying with federal and state laws and regulations;

(iv) operating a continuous quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems; and

(v) annually reviewing the written policies and procedures and documenting such review.

(e) Records.

(1) every record required to be kept under the provisions of this section shall be:

(A) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) The pharmacy shall maintain appropriate records which identify, by prescription drug or medication order, the name(s), initials, or identification code(s) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs a processing function for a prescription drug or medication order. Such records may be maintained:

(A) separately by each pharmacy and pharmacist; or

(B) in a common electronic file as long as the records are maintained in such a manner that the data processing system can produce a printout which lists the functions performed by each pharmacy and pharmacist.

(3) In addition, the pharmacy shall comply with the record keeping requirements applicable to the class of pharmacy to the extent applicable for the specific processing activity and 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 September 14, 2020.

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8010

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CHAPTER 309. SUBSTITUTION OF DRUG PRODUCTS

22 TAC §309.2

The Texas State Board of Pharmacy proposes amendments to §309.2, concerning Definitions. The amendments, if adopted, update the definition of original prescription.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear and grammatically correct regulatory language. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not limit or expand an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§309.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set out in the Act, §551.003 and Chapter 562.

(1) Act--The Texas Pharmacy Act, Occupations Code, Subtitle J, as amended.

(2) Biological product--A virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition of human beings.

(3) Biosimilar--A biological product that is highly similar to the reference product notwithstanding minor differences in clinically inactive components and there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency of the product.

(4) Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch, or gateway).

(5) Electronic prescription drug order--A prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(6) Generically equivalent--A drug that is pharmaceutically equivalent and therapeutically equivalent to the drug prescribed.

(7) Interchangeable--Referencing a biological product that is:

(A) biosimilar to the reference product and can be expected to produce the same clinical result as the reference product in any given patient; and if the biological product is administered more than once to an individual, the risk in terms of safety or diminished efficacy of alternating or switching between use of the biological product and the reference product is not greater than the risk of using the reference product without such alternation or switch may be substituted for the reference product without the intervention of the health care provider who prescribed the reference product; or

(B) designated as therapeutically equivalent to another product by the United States Food and Drug Administration in the most recent edition or supplement of the United States Food and Drug Administration's references.

(8) Pharmaceutically equivalent--Drug products that have identical amounts of the same active chemical ingredients in the same dosage form and that meet the identical compendial or other applicable standards of strength, quality, and purity according to the United States Pharmacopoeia or another nationally recognized compendium.

(9) Reference product--A single biological product against which a biological product is evaluated and is found to be biosimilar.

(10) Therapeutically equivalent--Pharmaceutically equivalent drug products that, if administered in the same amounts, will provide the same therapeutic effect, identical in duration and intensity.

(11) Original prescription--The:

(A) original written prescription drug orders; or

(B) original oral [~~verbal~~] or electronic prescription drug orders reduced to writing either manually or electronically [~~by the pharmacist~~].

(12) Practitioner--

(A) A person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state, including a physician, dentist, podiatrist, therapeutic optometrist, or veterinarian but excluding a person licensed under this subtitle;

(B) A person licensed by another state, Canada, or the United Mexican States in a health field in which, under the law of this state, a license holder in this state may legally prescribe a dangerous drug;

(C) A person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number and who may legally prescribe a Schedule II, III, IV, or V controlled substance, as specified under Chapter 481, Health and Safety Code, in that other state; or

(D) An advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders under §§157.0511, 157.0512, or 157.054, Occupations Code.

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

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-8010

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22 TAC §309.3

The Texas State Board of Pharmacy proposes amendments to §309.3, concerning Substitution Requirements. The amendments, if adopted, update the language regarding oral prescriptions to allow for expanded pharmacy technician duties and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the

rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide pharmacists with the ability to focus more on patient care by allowing pharmacy technicians to perform more nonjudgmental duties and to provide clear and grammatically correct regulatory language. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§309.3. Substitution Requirements.

(a) General requirements. In accordance with Chapter 562 of the Act, a pharmacist may dispense a generically equivalent drug or interchangeable biological product if:

(1) the generic drug or interchangeable biological product costs the patient less than the prescribed drug product;

(2) the patient does not refuse the substitution; and

(3) the practitioner does not certify on the prescription form that a specific prescribed brand is medically necessary as specified in a dispensing directive described in subsection (c) of this section.

(b) Prescription format for written prescription drug orders.

(1) A written prescription drug order issued in Texas may:

(A) be on a form containing a single signature line for the practitioner; and

(B) contain the following reminder statement on the face of the prescription: "A generically equivalent drug product may be dispensed unless the practitioner hand writes the words 'Brand Necessary' or 'Brand Medically Necessary' on the face of the prescription."

(2) A pharmacist may dispense a prescription that is not issued on the form specified in paragraph (1) of this subsection, however, the pharmacist may dispense a generically equivalent drug or interchangeable biological product unless the practitioner has prohibited substitution through a dispensing directive in compliance with subsection (c)(1) of this section.

(3) The prescription format specified in paragraph (1) of this subsection does not apply to the following types of prescription drug orders:

(A) prescription drug orders issued by a practitioner in a state other than Texas;

(B) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(C) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(4) In the event of multiple prescription orders appearing on one prescription form, the practitioner shall clearly identify to which prescription(s) the dispensing directive(s) apply. If the practitioner does not clearly indicate to which prescription(s) the dispensing directive(s) apply, the pharmacist may substitute on all prescriptions on the form.

(c) Dispensing directive.

(1) General requirements. The following is applicable to the dispensing directive outlined in this subsection.

(A) When a prescription is issued for a brand name product that has no generic equivalent product, the pharmacist must dispense the brand name product. If a generic equivalent or interchangeable biological product becomes available, a pharmacist may substitute the generically equivalent or interchangeable biological product unless the practitioner has specified on the initial prescription that the brand name product is medically necessary.

(B) If the practitioner has prohibited substitution through a dispensing directive in compliance with this subsection, a pharmacist shall not substitute a generically equivalent drug or interchangeable biological product unless the pharmacist obtains verbal or written authorization from the practitioner, notes such authorization on the original prescription drug order, and notifies the patient in accordance with §309.4 of this title (relating to Patient Notification).

(2) Written prescriptions.

(A) A practitioner may prohibit the substitution of a generically equivalent drug or interchangeable biological product for a brand name drug product by writing across the face of the written prescription, in the practitioner's own handwriting, the phrase "brand necessary" or "brand medically necessary."

(B) The dispensing directive shall:

(i) be in a format that protects confidentiality as required by the Health Insurance Portability and Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.) and its subsequent amendments; and

(ii) comply with federal and state law, including rules, with regard to formatting and security requirements.

(C) The dispensing directive specified in this paragraph may not be preprinted, rubber stamped, or otherwise reproduced on the prescription form.

(D) A practitioner may prohibit substitution on a written prescription only by following the dispensing directive specified in this paragraph. Two-line prescription forms, check boxes, or other notations on an original prescription drug order which indicate "substitution instructions" are not valid methods to prohibit substitution, and a pharmacist may substitute on these types of written prescriptions.

(3) Oral [~~Verbal~~] Prescriptions.

(A) If a prescription drug order is transmitted [~~to a pharmacist~~] orally, and the practitioner or practitioner's agent prohibited [~~shall prohibit~~] substitution by specifying "brand necessary" or "brand medically necessary," [~~.~~"] a notation of [~~The pharmacist shall note~~] any substitution instructions by the practitioner or practitioner's agent shall be made [~~,~~] on the file copy of the prescription drug order. Such file copy may follow the one-line format indicated in subsection (b)(1) of this section, or any other format that clearly indicates the substitution instructions.

(B) If the practitioner's or practitioner's agent does not clearly indicate that the brand name is medically necessary, the pharmacist may substitute a generically equivalent drug or interchangeable biological product.

(C) To prohibit substitution on an oral [~~a verbal~~] prescription reimbursed through the medical assistance program specified in 42 C.F.R., §447.331:

(i) the practitioner or the practitioner's agent shall orally [~~verbally~~] indicate that the brand is medically necessary; and

(ii) the practitioner shall mail or fax a written prescription to the pharmacy which complies with the dispensing directive for written prescriptions specified in paragraph (1) of this subsection within 30 days.

(4) Electronic prescription drug orders.

(A) To prohibit substitution, the practitioner or practitioner's agent shall clearly indicate substitution instructions in the electronic prescription drug order.

(B) If the practitioner or practitioner's agent does not indicate or does not clearly indicate in the electronic prescription drug order that the brand is necessary, the pharmacist may substitute a generically equivalent drug or interchangeable biological product.

(C) To prohibit substitution on an electronic prescription drug order reimbursed through the medical assistance program specified in 42 C.F.R., §447.331, the practitioner shall comply with state and federal laws.

(5) Prescriptions issued by out-of-state, Mexican, Canadian, or federal facility practitioners.

(A) The dispensing directive specified in this subsection does not apply to the following types of prescription drug orders:

(i) prescription drug orders issued by a practitioner in a state other than Texas;

(ii) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(iii) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(B) A pharmacist may not substitute on prescription drug orders identified in subparagraph (A) of this paragraph unless the practitioner has authorized substitution on the prescription drug order. If the practitioner has not authorized substitution on the written prescription drug order, a pharmacist shall not substitute a generically equivalent drug product unless:

(i) the pharmacist obtains verbal or written authorization from the practitioner (such authorization shall be noted on the original prescription drug order); or

(ii) the pharmacist obtains written documentation regarding substitution requirements from the State Board of Pharmacy in the state, other than Texas, in which the prescription drug order was issued. The following is applicable concerning this documentation.

(I) The documentation shall state that a pharmacist may substitute on a prescription drug order issued in such other state unless the practitioner prohibits substitution on the original prescription drug order.

(II) The pharmacist shall note on the original prescription drug order the fact that documentation from such other state board of pharmacy is on file.

(III) Such documentation shall be updated yearly.

(d) Refills.

(1) Original substitution instructions. All refills shall follow the original substitution instructions unless otherwise indicated by the practitioner or practitioner's agent.

(2) Narrow therapeutic index drugs.

(A) The board and the Texas Medical Board shall establish a joint committee to recommend to the board a list of narrow therapeutic index drugs and the rules, if any, by which this paragraph applies to those drugs. The committee must consist of an equal number of members from each board. The committee members shall select a member of the committee to serve as presiding officer for a one year term. The presiding officer may not represent the same board as the presiding officer's predecessor.

(B) The board, on the recommendation of the joint committee, has determined that no drugs shall be included on a list of narrow therapeutic index drugs as defined in §562.014, Occupations Code.

(i) The board has specified in §309.7 of this title (relating to dispensing responsibilities) that for drugs listed in the publication, pharmacist shall use as a basis for determining generic equivalency, Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements published by the Federal Food and Drug Administration, within the limitations stipulated in that publication. For drugs listed in the publications, pharmacists may only substitute products that are rated therapeutically equivalent in the Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements.

(ii) Practitioners may prohibit substitution through a dispensing directive in compliance with subsection (c) of this section.

(C) The board shall reconsider the contents of the list if:

(i) the Federal Food and Drug Administration determines a new equivalence classification which indicates that certain

drug products are equivalent but special notification to the patient and practitioner is required when substituting these products; or

(ii) any interested person petitions the board to reconsider the list. If the board receives a petition to include a drug on the list, the joint committee specified in subparagraph (A) of this paragraph shall review the request and make a recommendation to the board.

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

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8010

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CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.3

The Texas State Board of Pharmacy proposed amendments to §315.3, concerning Prescriptions. The amendments, if adopted, clarify the circumstances under which a controlled substance prescription is not required to be issued electronically and the procedures for requesting a waiver of the electronic prescribing requirement.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide rules establishing the eligibility for a waiver so that each regulatory agency that issues a license, certification, or registration to a prescriber may adopt consistent rules, as required by HB 2174. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do expand an existing regulation by establishing the eligibility for a waiver, as required by House Bill 2174;

(7) The proposed amendments do not increase the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Deputy General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 31, 2020.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§315.3 Prescriptions.

(a) Schedule II Prescriptions.

(1) Except as provided by subsection (e) of this section, a practitioner, as defined in §481.002(39)(A) of the TCSA, must issue a written prescription for a Schedule II controlled substance only on an official Texas prescription form or through an electronic prescription that meets all requirements of the TCSA. This subsection also applies to a prescription issued in an emergency situation.

(2) A practitioner who issues a written prescription for any quantity of a Schedule II controlled substance must complete an official prescription form.

(3) Except as provided by subsection (f) of this section, a practitioner may issue multiple written prescriptions authorizing a patient to receive up to a 90-day supply of a Schedule II controlled substance provided:

(A) each prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice;

(B) the practitioner provides written instructions on each prescription, other than the first prescription if the practitioner intends for that prescription to be filled immediately, indicating the earliest date on which a pharmacy may dispense each prescription; and

(C) the practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse.

(4) A schedule II prescription must be dispensed no later than 21 days after the date of issuance or, if the prescription is part of a multiple set of prescriptions, issued on the same day, no later than 21 days after the earliest date on which a pharmacy may dispense the prescription as indicated on each prescription.

(5) A person dispensing a Schedule II controlled substance prescription shall provide written notice on the safe disposal of controlled substance prescription drugs that includes information on locations at which Schedule II controlled substance prescription drugs are accepted for safe disposal. In lieu of listing those locations, the notice may alternatively provide the address of an Internet website specified

by the board that provides a searchable database of locations at which Schedule II controlled substance prescription drugs are accepted for safe disposal. The written notice may be provided to the patient in an electronic format, such as by e-mail, if the patient or patient's agent requests the notice in an electronic format and the request is documented. Such written notice is not required if:

(A) the Schedule II controlled substance prescription drug is dispensed at a pharmacy or other location that:

(i) is authorized to take back those drugs for safe disposal; and

(ii) regularly accepts those drugs for safe disposal; or

(B) the dispenser provides to the person to whom the Schedule II controlled substance prescription drug is dispensed, at the time of dispensation and at no cost to the person:

(i) a mail-in pouch for surrendering unused controlled substance prescription drugs; or

(ii) chemicals to render any unused drugs unusable or non-retrievable.

(b) Schedules III through V Prescriptions.

(1) A practitioner, as defined in §§481.002(39)(A), (C), (D) of the TCSA, may use prescription forms and order forms through individual sources. A practitioner may issue, or allow to be issued by a person under the practitioner's direction or supervision, a Schedule III through V controlled substance on a prescription form for a valid medical purpose and in the course of medical practice.

(2) Except as provided in subsection (f) of this section, Schedule III through V prescriptions may be refilled up to five times within six months after date of issuance.

(c) Electronic prescribing [~~prescription~~].

(1) A practitioner is permitted to issue and to dispense an electronic controlled substance prescription only in accordance with the requirements of the Code of Federal Regulations, Title 21, Part 1311.

(2) Effective January 1, 2021, a prescription for a controlled substance is not required to be issued electronically and may be issued in writing if the prescription is issued:

(A) in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure; or

(B) by a practitioner to be dispensed by a pharmacy located outside this state.

(3) A prescriber may apply for a waiver from the electronic prescribing requirement by:

(A) submitting a waiver request form to the agency that issued the license, certification, or registration to the prescriber, including any information requested on the form; and

(B) demonstrating circumstances necessitating a waiver from the requirement, including:

(i) economic hardship, as determined by the agency that issued the license, registration, or certification to the prescriber on a prescriber/by prescriber basis, taking into account factors including:

(I) any special situational factors affecting either the cost of compliance or ability to comply;

(II) the likely impact of compliance on profitability or viability; and

(III) the availability of measures that would mitigate the economic impact of compliance;

(ii) technological limitations not reasonably within the control of the prescriber; or

(iii) other exceptional circumstances demonstrated by the prescriber.

(C) A waiver may be issued to a prescriber for a period of one year as specified in Chapter 481 of the Texas Controlled Substances Act. A prescriber may reapply for a subsequent waiver not earlier than the 30th day before the date the waiver expires if the circumstances that necessitated the waiver continue.

(d) Controlled substance prescriptions may not be postdated.

(e) Advanced practice registered nurses or physician assistants may only use the official prescription forms issued with their name, address, phone number, and DEA numbers, and the delegating physician's name and DEA number.

(f) Opioids for the treatment of acute pain.

(1) For the treatment of acute pain, as defined in §481.07636 of the TCSA, a practitioner may not:

(A) issue a prescription for an opioid in an amount that exceeds a 10-day supply; or

(B) provide for a refill of the opioid prescription.

(2) Paragraph (1) of this subsection does not apply to a prescription for an opioid approved by the U.S. Food and Drug Administration for the treatment of substance addiction that is issued by a practitioner for the treatment of substance addiction.

(3) A dispenser is not subject to criminal, civil, or administrative penalties for dispensing or refusing to dispense a controlled substance under a prescription that exceed the limits provided by paragraph (1) of this subsection.

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 September 14, 2020.

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Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-8010

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 502. PEER ASSISTANCE

22 TAC §502.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §502.1, concerning Peer Assistance to Licensees.

Background, Justification and Summary

The current rule is not clear as to who the Peer Assistance Program is available to.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be to make it clear that Peer Assistance is available to applicants to become CPAs and certificate holders in addition to licensees.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on November 2, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§502.1. Peer Assistance to Licensees.

(a) The board adopts the provisions contained in the Texas Health and Safety Code, Chapter 467, Peer Assistance Programs, in its entirety, including any amendments enacted by the Texas Legislature.

(b) Should the board receive information regarding a licensee, applicant or certificate holder indicating possible chemical dependency on drugs or alcohol or mental health issues, the board may:

(1) refer the licensee, applicant, or certificate holder to an approved peer assistance program; or

(2) require the licensee, applicant, or certificate holder to participate in or complete a course of treatment or rehabilitation.

(c) Should the board receive a complaint or other information constituting possible violations of other board rules, including chemical dependency on drugs or alcohol, or mental health issues, then the board may take action as appropriate under this title and the Act regarding those possible violations in addition to making a referral under subsection (b) of this section.

(d) An approved peer assistance program that receives a report or referral under subsection (b) of this section or a report under §467.005(a) of the Texas Health and Safety Code, may intervene to assist the licensee, applicant or certificate holder to obtain and complete a course of treatment and rehabilitation.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-7842

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CHAPTER 505. THE BOARD

22 TAC §505.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.1, concerning Board Seal and Headquarters.

Background, Justification and Summary

The Board has relocated its office and has a new address that is different than the address in the Board rule.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will provide the correct Board address to the public.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on November 2, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§505.1. Board Seal and Headquarters.

(a) The official seal of the board illustrated in paragraph (8) of this subsection shall consist of:

(1) a circle with a rope border;

(2) a five point star comprised of five diamond shapes, in the center, with the star placed so that one point is pointed directly at the top, with the remaining points spaced equidistant;

(3) the word "TEXAS" is spelled out placing one capital letter between each point of the star beginning on the left side of the star;

(4) the center star is itself bordered by a circle of dots;

(5) the words "TEXAS STATE" in capital letters appear at the top of the seal in the margin between the dot border and the rope border;

(6) the words "BOARD OF PUBLIC ACCOUNTANCY" in capital letters appear at the bottom of the seal in the margin between the dot border and the rope border;

(7) the background of the seal shall be black; and

(8) all features described in paragraphs (1) - (6) of this subsection shall be in gold.

Figure: 22 TAC §505.1(a)(8) (No change.)

(b) The board seal may be embossed on a solid gold background to place official board records and documents under seal. The board may cause the board seal to be reproduced in other color schemes for use in official board business or board authorized functions or publications. The board seal may not be reproduced or used for non-board business without the express written consent of the board's executive director.

(c) The headquarters and administrative offices of the board shall be at 505 E. Huntland Drive, Suite 380, Austin, Texas 78752 [~~333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701-3900~~].

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 September 17, 2020.

TRD-202003840
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-7842

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22 TAC §505.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.10, concerning Board Committees.

Background, Justification and Summary

The citation to the rule is incorrect and should be corrected. In addition, legislation creating the fifth-year accounting student advisory committee was repealed during the last session of the legislature and the rule section addressing the committee should be repealed.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be to correctly identify the rule referenced and to eliminate a rule no longer effective.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on November 2, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§505.10. Board Committees.

(a) Committee appointments. Appointments to standing committees and ad hoc committees shall be considered annually by the board's presiding officer to assist in carrying out the functions of the board under the provisions of the Act. Committee appointments shall be made by the presiding officer for a term of two years but may be terminated at any point by the presiding officer. Committee members may be re-appointed at the discretion of the presiding officer. The board's presiding officer shall be an ex officio member of each standing committee and ad hoc committee and chair of the executive committee.

(b) Committee actions. The actions of the committees are recommendations only and are not binding until ratification by the board at a regularly scheduled meeting.

(c) Committee meetings. Committee meetings shall be held at the call of the committee chair, and a report to the board at its next regularly scheduled meeting shall be made by such chair or, in the absence of the chair, by another board member serving on the committee.

(d) Vacancies. If for any reason a vacancy occurs on a committee, the board's presiding officer may appoint a replacement in accordance with subsection (a) of this section.

(e) Standing committee structure and charge to committees. The standing committees shall consist of policy-making committees and working committees comprised of the following individuals and shall be charged with the following responsibilities.

(1) The executive committee shall be a policy-making committee comprised of the board's presiding officer, assistant presiding officer, secretary, treasurer, immediate past presiding officer of the board if still serving on the board, and at least one other officer elected by the board. The executive committee shall also be the board's audit committee. The executive committee may act on behalf of the full board in matters of urgency, or when a meeting of the full board is not feasible; the executive committee's actions are subject to full board ratification at its next regularly scheduled meeting. The functions of the executive committee shall be to advise, consult with, and make recommendations to the board concerning matters requested by the board's presiding officer, including:

(A) the board's budget and finances;

(B) litigation;

(C) emergency suspensions pursuant to §519.12 [~~§519.11~~] of this title (relating to Emergency Suspension);

(D) emergency rulemaking pursuant to §2001.034 of the Administrative Procedure Act;

(E) amendments to the Act;

(F) responses/positions relating to papers, reports, and other submissions from national or international associations or boards;

(G) legislative oversight, including, but not limited to, budget, performance measures, proposed changes in legislation affecting the board, and computer utilization; and

(H) special issues.

(2) The CPE committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the mandatory CPE program in accordance with Chapter 523 of this title (relating to Continuing Professional Education);

(B) investigations of sponsor compliance with the terms of the sponsor agreements, including the related recordkeeping requirements;

(C) the results of monitoring CPE courses for the purpose of evaluating the facilities, course content as presented, and the adequacy of the course presenter(s);

(D) any significant deficiencies observed in carrying out subparagraphs (B) and (C) of this paragraph; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the mandatory CPE program as it relates to licensees and to relations with sponsors of CPE.

(3) The qualifications committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the educational qualifications of an applicant for the UCPAE in accordance with Chapter 511, Subchapter C of this title (relating to Educational Requirements) and courses that may be used to meet the education requirements to take the examination;

(B) the administration, security, discipline, and other aspects of the conduct of the UCPAE in Texas;

(C) the work experience qualifications of an applicant for the CPA certificate in accordance with §§511.121 - 511.124 of this title (relating to Experience Requirements); and

(D) recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the qualifications process.

(4) The licensing committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) applications for certification, registration, and licensure;

(B) where applicable, the equivalency examination measuring the professional competency of an applicant for a CPA certificate by reciprocity; and

(C) recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies as they relate to the licensing process.

(5) The behavioral enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) review requests or applications for reinstatement of any certificate, registration, or license which the committee recommended and the board revoked, suspended, or refused to renew;

(B) investigate complaints involving alleged violations of the Act and the board's rules, primarily concerning behavioral issues, and based upon its findings, make recommendations to the board or authorize the staff to offer an agreed consent order, or in the alternative, to litigate the findings of Act or rule violations;

(C) follow up on board orders to insure that licensees and certificate holders and others adhere to sanctions prescribed by or agreements with the board; and

(D) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the behavioral restraints of the rules and the Act.

(6) The technical standards review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least three non-board members who shall serve in an advisory capacity. The committee shall:

(A) review requests or applications for reinstatement of any certificate, registration, or license which the committee recommended and the board revoked, suspended, or refused to renew;

(B) investigate complaints from any source involving alleged violations of the Act and the board's rules, primarily concerning technical issues and based upon its findings, make recommendations to the board or authorize the staff to offer an agreed consent order, or in the alternative, to litigate the findings of Act or rule violations;

(C) follow up on board orders to insure that licensees or certificate holders and others adhere to sanctions prescribed by or agreements with the board; and

(D) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to enforcement of technical standards.

(7) The peer review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) conduct a periodic review of firms in accordance with Chapter 527 of this title (relating to Peer Review);

(B) refer to the technical standards review committee firms with deficient reviews for which educational rehabilitation has not been effective; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the peer review program.

(8) The board rules committee shall be a policy-making committee comprised of at least three board members, one of whom shall serve as chair. The committee shall make recommendations to the board concerning the board's rules, opinions and policies. All working committees shall refer proposed changes to the board's rules, opinions and policies to the rules committee for consideration for recommendation to the board.

(9) The peer assistance oversight committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall oversee the peer assistance program administered by the TSCPA as required under the Texas Health and Safety Code, §467.001(1)(B), and insure that the minimum criteria as set out by the Department of State Health Services are met. It shall make recommendations to the board and the TSCPA regarding modifications to the program and, if warranted, refer cases to other board committees for consideration of disciplinary or remedial action by the board. The committee shall report to the board on a semi-annual basis, by case number, on the status of the program.

(10) The constructive enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by non-board CPA members. At least one Committee member shall be a public member of the board. The committee shall approve the constructive enforcement program, coordinate its activities with board committees and staff, and supervise the training of constructive enforcement advisory committee members. A staff attorney of the board shall supervise the day to day administration of the constructive enforcement program and activities of the committee's non-board members on behalf of the committee chairman. The committee shall:

(A) investigate matters forwarded to the committee from any other board committee or board staff in accordance with board instruction and policy;

(B) prepare, as appropriate, investigative reports regarding each referred matter;

(C) inform referring board committees or board staff of the results of its investigations;

(D) inform the appropriate committee when possible violations of board rules and the Act are observed; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the constructive enforcement program.

~~[(11) The Fifth-Year Accounting Students Scholarship Program advisory committee was created in §901.657 of the Act (relating to Advisory Committee) and consists of eight members appointed by the board for the purpose of advising the board on how scholarships under the Fifth-Year Accounting Students Scholarship Program should be established and administered; the amount of money needed to adequately fund the scholarships and the maximum amount that may be awarded in any given year to an individual student; and any priorities among the factors of financial need, ethnic or racial minority status, and scholastic ability and performance.]~~

(f) Ad hoc advisory committees. Ad hoc advisory committees may be established by the board's presiding officer and members and advisory members appointed as appropriate.

(g) Policy guidelines. All advisory committee members performing any duties utilizing board facilities and/or who have access to board records, shall conform and adhere to the standards, board rules, and personnel policies of the board as described in its personnel manual and to the laws of the State of Texas governing state employees.

(h) Conflicts of interest. To avoid a conflict of interest or the appearance of a conflict of interest, no committee member may provide a report or expert testimony for or otherwise advocate on behalf of a complainant or a respondent in a disciplinary matter pending before the board while serving on a standing committee of the board.

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 September 17, 2020.

TRD-202003842
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-7842

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CHAPTER 507. EMPLOYEES OF THE BOARD

22 TAC §507.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §507.4, concerning Confidentiality.

Background, Justification and Summary

Clarification is needed to recognize the need for written authorization from the license applicant, or former or current license holder before their investigation files may be released pursuant to the Public Information Act.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be to make the public aware that written authorization is required prior to the release of Board investigation files.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on November 2, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§507.4. Confidentiality.

(a) Members of the board, advisory committee members, the executive director, members of board staff, independent contractors and consultants retained by the board shall not disclose any confidential information which comes to their attention, except as may be required by law.

(b) All complaints, investigation files, investigation reports, and other investigative information in the possession of, received or gathered by the board is confidential and any employee, agent, or member of the board may not disclose the information contained in these files except to another governmental, regulatory or law enforcement agency engaged in an enforcement action and as provided for in §901.160 of the Act (relating to Availability and Confidentiality of Certain Board Files) or upon receiving written authorization from the license applicant or current or former license holder who is the subject of the investigation.

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 September 17, 2020.

TRD-202003843
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-7842

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER I. LICENSING

22 TAC §801.206

The Texas Behavioral Health Executive Council proposes new §801.206, relating to Licensing Persons with Criminal Convictions.

Overview and Explanation of the Proposed Rule. The proposed rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed amendment pertains to licensing persons with criminal convictions as marriage and family therapists; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may propose this rule amendment.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules by aligning with current legal standards. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it clarifies a rule that was repealed so it may better align with current legal standards; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which

vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.206. Licensing of Persons with Criminal Convictions.

The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

(1) offenses listed in Articles 42A.054 of the Code of Criminal Procedure;

(2) a sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure;

(3) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;

(4) any criminal violation of Chapter 502 (Licensed Marriage and Family Therapist Act of the Occupations Code;

(5) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A Medicaid Fraud) of the Penal Code;

(6) any criminal violation involving a federal health care program, including 42 USC §130a-7b (Criminal penalties for acts involving Federal health care programs);

(7) any offense involving the failure to report abuse or neglect;

(8) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of marriage and family therapy;

(9) any criminal violation of §22.041 (Abandoning or Endangering a Child) of the Penal Code;

(10) any criminal violation of §21.15 (Invasive Visual Recording) of the Penal Code;

(11) any criminal violation of §43.26 (Possession of Child Pornography) of the Penal Code;

(12) any criminal violations of §22.04 (Injury to a Child, Elderly Individual, or Disabled Individual) of the Penal Code;

(13) three or more drug or alcohol related convictions within the last 10 years, evidencing possible addiction that will have an effect on the licensee's ability to provide competent services; and

(14) any attempt, solicitation, or conspiracy to commit an offense listed herein.

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 September 15, 2020.

TRD-202003813
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-7706

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PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 881. GENERAL PROVISIONS
SUBCHAPTER B. RULEMAKING

22 TAC §881.21

The Texas Behavioral Health Executive Council proposes amended §881.21, relating to Petition for Rulemaking.

Overview and Explanation of the Proposed Rule. The proposed change is being made to clarify the requirement that any requested rule change involving those matters set forth in §507.153(a) of the Occupations Code must be taken up and reviewed by the appropriate member board before being considered for proposal and adoption by the Council.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity in the Executive Council's rules, specifically regarding the handling of certain petitions for rule making. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it clarifies an existing rule; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Lastly, the Executive Council proposes this rule under the authority found in §2001.021 of the Tex. Gov't Code which requires state agencies to prescribe by rule the form for a petition for adoption of rules by interested persons and the procedure for its submission, consideration, and disposition.

No other code, articles or statutes are affected by this section.

§881.21. Petition for Rulemaking.

(a) Any interested person may petition for rulemaking in accordance with §2001.021 of the Government Code by submitting to the Council a written request for the adoption of a rule or rule change. The written request must contain a return mailing address for the agency's response.

(b) The written request must, at a minimum, set forth or identify the rule the petitioner wants the Council to adopt or change, reasons why the petitioner believes the requested rulemaking is necessary, and include a copy of the proposed rule or any proposed changes with deletions crossed through and additions underlined. Additionally, the written request must affirmatively show that the requestor qualifies as an interested person under this rule. Requests which do not affirmatively show that the requestor qualifies as an interested person under this rule may be denied.

(c) The written request should also address the economic cost to persons required to comply with the rule, the effects of the rule on small or micro-businesses or rural communities, and the impact the rule would have on local employment or economics, if such information can be derived from available sources without undue cost or burden.

(d) A petition for rulemaking which involves any of those matters set forth in §507.153(a) of the Occupations Code will be submitted by agency staff to the appropriate member board for initial review and consideration.

(e) [~~(d)~~] The Council will respond to a written request for adoption of a rule from an interested person in accordance with §2001.021 of the Government Code.

(f) [~~(e)~~] The term "interested person" as used in this rule, shall have the same meaning as that assigned by §201.021(d) of the Government Code. Additionally, a person who submits a petition under this rule must affirm that they qualify as an interested person in the petition. Petitions which do not contain such an affirmation may be denied.

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 September 15, 2020.

TRD-202003793
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-7706

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CHAPTER 885. FEES

22 TAC §885.1

The Texas Behavioral Health Executive Council proposes amended §885.1, relating to Fees.

Overview and Explanation of the Proposed Rule. The proposed amended rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 507.154 of the Tex. Occ. Code authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code. The Executive Council adopted a rule to implements this statutory duty but the adopted fee schedule omitted the initial licensure fee that is currently being charged for Licensed Marriage and Family Therapist (LMFT) applications, this proposed fee is the same as the current fee being charged by the LMFT Board; the LMFT associate extension base fee was off by $5 dollars and needs to be increased accordingly; the mention of an upgrade fee for a Licensed Master Social Worker-Advanced Practitioner (LMSW-AP) needs to be deleted since LMSW-AP applications are no longer being accepted; and the $5 fee previously listed in the Texas.gov column for examinations fees is actually the base fee and the fee schedule needs to be amended accordingly, but results in no increase in costs.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Counsel, has determined that for the first five-year period the proposed rule is in effect, the Executive Council will increase a renewal fees but only to the extent necessary to meet the contingency rider found in §18.11 of Art. IX in the General Appropriations Act for 2020-2021, see Tex. H.B. 1, 86th Leg., R.S. (2019); there will be no additional estimated cost, reduction in costs, or loss in revenue to the state or local governments as a result of enforcing or administering the rule. The proposed rule will result in an increase in revenue to the state, but only in the amount necessary to cover the aforementioned contingency rider. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be an additional economic costs to some persons required to comply with this rule. This proposed rule will increase the LMFT associate extension renewal fee by $5. The proposed rule does not increase the cost for the initial LMFT licensure fee since $90 is the same fee currently being charged by the LMFT Board. The other changes to the rule are non-substantive and does not increase the economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new costs to state agencies, special districts, or local governments; but, as previously discussed, the proposed rule does impose some new or additional costs to regulated persons. Pursuant to §2001.0045(c)(9) of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs because this rule is necessary to implement legislation. Newly enacted §507.154 of the Tex. Occ. Code authorizes the Executive Council to set fees necessary to cover the costs of administering the newly formed agency. The new and increased application and renewal fees are necessary to meet the contingency rider found in §18.11 of Art. IX in the General Appropriations Act for 2020-2021, see Tex. H.B. 1, 86th Leg., R.S. (2019). The initial LMFT licensure fee and the $5 increase to the LMFT associate extension renewal fee was originally factored into the agency's calculations to meet the contingency rider requirement but were inadvertently omitted from the previously proposed and adopted rule. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease

in future legislative appropriations to the agency; as previously discussed and described, it does require some increases in fees paid to the agency but new application fee and the increase a renewal fee is legislatively required to cover the costs for administering the agency; it does not create a new regulation, although they are new fees they essentially consolidate the fees from another regulatory board into a new agency, as required by statute, thereby reducing the amount of regulations in Texas; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The amended rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this amended rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council proposes this amended rule pursuant to the authority found in §507.154 of the Tex. Occ. Code which authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code.

Lastly, the Executive Council proposes this amended rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§885.1. Executive Council Fees.

(a) General provisions.

(1) All fees are nonrefundable and cannot be waived except as otherwise permitted by law.

(2) Fees required to be submitted online to the Council must be paid by debit or credit card. All other fees paid to the Council must be in the form of a personal check, cashier's check, or money order.

(3) For applications and renewals the Council is required to collect fees to fund the Office of Patient Protection (OPP) in accordance with Texas Occupations Code §101.307, relating to the Health Professions Council.

(4) For applications, examinations, and renewals the Council is required to collect subscription or convenience fees to recover costs associated with processing through Texas.gov.

(5) All examination fees are to be paid to the Council's designee.

(b) The Executive Council adopts the following chart of fees:
Figure: 22 TAC §885.1(b)
[~~Figure: 22 TAC §885.1(b)~~]

(c) Late fees.

(1) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the Council a fee in an amount equal to one and one-half times the base renewal fee.

(2) If the person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the Council a fee in an amount equal to two times the base renewal fee.

(3) If the person's license has been expired for one year or more, the person may not renew the license; however, the person may apply for reinstatement of the license.

(d) Open Records Fees. In accordance with §552.262 of the Government Code, the Council adopts by reference the rules developed by the Office of the Attorney General in 1 TAC Part 3, Chapter 70 (relating to Cost of Copies of Public Information) for use by each governmental body in determining charges under Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information).

(e) Military Exemption for Fees. All licensing and examination base rate fees payable to the Council are waived for the following individuals:

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all licensure requirements; and

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

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 September 15, 2020.

TRD-202003780

Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 305-7706

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

31 TAC §65.92

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §65.92, concerning CWD Testing. The proposed amendment would require deer breeders to report all mortalities of breeder deer possessed in a breeding facility within 14 days of detection and to submit all CWD test samples to an accredited testing laboratory within 14 days of collection.

Prior to 2015, the department's regulatory apparatus for detecting chronic wasting disease (CWD) in captive deer was contained in various subchapters regulating various permits that authorize the holding of deer in captivity. The testing standards imposed by the rules were considered to be at best minimally efficacious for detecting CWD in captive deer populations and were intended to be the least burdensome regulatory footprint possible in light of the fact that up to that point in time, CWD had not been discovered in captive breeding facilities in Texas. However, with the discoveries of multiple CWD-positive deer in deer breeding facilities in 2015 and 2016, the department adopted rules that imposed significantly more robust testing protocols and movement restrictions. Those rules are contained in Chapter 65, Subchapter B, and supersede the testing rules contained in Chapter 65, Subchapter T.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is no scientific evidence to indicate that CWD is transmissible to humans. What is known is that CWD is invariably fatal to cervids, and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease correlates with deer population declines, and human dimensions research suggests that hunters will avoid areas of high CWD prevalence. Additionally, the apparent persistence of CWD in contaminated environments represents a significant obstacle to eradication of CWD from either farmed or free-ranging cervid populations.

It is imperative that deer mortalities within a breeding facility be reported promptly for inventory reconciliation which is necessary for the department to be able to quickly initiate contact tracing in the event of an epidemiological investigation. Prompt submission of CWD samples will aid in early detection of the disease where it exists, which will reduce the probability of CWD being transferred from a CWD-positive deer breeding facility to other deer breeding facilities or release sites. Additionally, prompt submission of CWD samples is recommended by accredited diagnostic testing laboratories. The proposed amendment is intended to provide assurances that reporting and testing protocols are optimal.

Mitch Lockwood, Big Game Program Director, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Lockwood also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the reduction of the probability of CWD being spread from facilities where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas.

There will be no adverse economic effect on persons required to comply with the rule.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create or expand an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Mitch Lockwood at (830) 792-9677, e-mail: mitch.lockwood@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter.

The proposed amendment affects Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.92. CWD Testing.

(a) - (g) (No change.)

(h) Deer breeders shall report all deer mortalities that occur within a breeding facility within 14 days of detection.

(i) All CWD test samples shall be submitted to an accredited testing laboratory within 14 days of collection.

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 September 21, 2020.

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Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §§65.101 - 65.103, 65.107, 65.109, 65.111, 65.115

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§65.101 - 65.103, 65.107, 65.109, 65.111, and 65.115, concerning Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds (popularly known as "Triple T" permits). In general, the amendments harmonize the subchapter with the contents of Chapter 65, Subchapter B, concerning Disease Detection and Response, but also make specific substantive and non-substantive changes as noted.

Prior to 2015, the department's regulatory apparatus for detecting chronic wasting disease (CWD) was contained in this subchapter (Chapter 65, Subchapter T). The testing standards imposed by the rules were considered to be at best minimally efficacious for detecting CWD in captive deer populations and were intended to be the least burdensome regulatory footprint possible in light of the fact that up to that point in time, CWD had not been discovered in captive breeding facilities in Texas. However, with the discoveries of multiple CWD-positive deer in deer breeding facilities in 2015 and 2016, the department adopted rules that imposed more robust testing protocols and movement restrictions. Those rules are contained in Chapter 65, Subchapter B, and supersede the testing rules contained in Chapter 65, Subchapter C.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is no scientific evidence to indicate that CWD is transmissible to humans. What is known is that CWD is invariably fatal to cervids and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease correlates with deer population declines, and human dimensions research suggests that hunters will avoid areas of high CWD prevalence. Additionally, the apparent persistence of CWD in contaminated environments represents a significant obstacle to eradication of CWD from either farmed or free-ranging cervid populations.

Additionally, the proposed amendments would function to standardize the department's approach to the process of administering the Triple T program. The specificity in the current rules apply primarily to deer, which are by far the most commonly transplanted game species in the state. However, the department occasionally is approached with requests concerning other species of game animals and game birds, and the department believes a standardized set of rules for processing all Triple T requests is appropriate, although there will be exceptions as required for specific species because of biological parameters.

The proposed amendment to §65.101, concerning Definitions, would create a definition for "aggregate acreage" in order to define that term for purposes of allowing multiple landowners to collaborate in stocking and restoration efforts, either as the source of or destination for game animals and game birds. The term would be defined as "contiguous tracts of land, to, from, and between which game animals and game birds have complete and unrestricted access, combined by multiple landowners to create an area of land for the purpose of trapping or releasing game animals or game birds under a permit issued under this subchapter." It is biologically important to require all tracts to be contiguous and for released animals to be capable of moving at will for purposes of maximum biological benefit to the resource and the

landscape. For purposes of clarity, the proposed amendment also would define "landowner" as "any person who has an ownership interest in a tract of land, and includes a person authorized by the landowner to act on behalf of the landowner as the landowner's agent or manager of an aggregate acreage," which is necessary to clearly delineate what is meant by that term as it used for purposes of aggregate acreage permit issuance.

The proposed amendment also would create a definition for "georeferenced map."

A crucial component of the department's CWD management effort is the monitoring of free-ranging deer that are trapped and translocated and captive-bred deer that are introduced to, transferred among, and released from captive herds under department-issued permits. Such activities occur in virtually every area of the state. Because of the sheer geographic scale involved, the accuracy of geographical information regarding the locations where deer have been transferred by humans is one of the most important components of efficacious disease management efforts. Knowing exactly where transplanted populations were trapped and translocated allows epidemiological investigators to quickly and accurately determine the source and extent of pathways for disease propagation and allows responders to focus resources efficiently and effectively.

The proposed amendment also would insert the term "agricultural products" in the definition of "natural habitat." The intent of the current rules is to authorize releases of game animals and game birds into places where natural habitat alone is capable of providing nutrition and cover, and the released species are not dependent on the provision of supplemental, artificial, or unnatural food or cover for survival.

The proposed amendment would eliminate the definition of "permit year" and replace it with the more accurate term "trapping year." The department authorizes trapping activities only at times in the life cycle when those activities would exert the least stress on species being trapped.

The proposed amendment would eliminate the definition of "recruitment," which is artefact of previous rules and is not employed in the subchapter.

The proposed amendment also would eliminate the definition of "stocking policy" because the statutory authority to issue Triple T permits and the criteria for their issuance exist independently of the agency's stocking policy, rendering the reference superfluous.

Finally, the proposed amendment would alter the definition of "wildlife stocking plans" to differentiate the content of stocking plans for species other than deer and javelina, which are partially governed by regulatory provisions in Chapter 65, Subchapter A concerning the content of wildlife management plans for those species. There are no other department rules specifying the content of wildlife management plans for species other than deer and javelina.

The proposed amendment to §65.602, concerning Disease Detection Requirements, would eliminate the current contents of the section other than subsection (a)(5) and replace them with a reference to Subchapter B, Division 2 of the chapter. As stated previously in this preamble, the CWD testing and movement requirements for deer are set forth in Chapter 65, Subchapter B, Division 2, which makes the contents of §65.602 superfluous. Current subsection (a)(5) establishes an identification requirement for deer released under a Triple T permit and is being retained as subsection (b).

The proposed amendment to §65.103, concerning Trap, Transport, and Transplant Permit, consists of several actions. Current subsections (a) - (c) and (f) would be eliminated because those subsections are proposed for relocation to §65.107, concerning Permit Application and Processing, where they more properly belong. Current subsections (d), (e), and (g) would be retained and re-designated as subsections (a), (c), and (b), respectively, with the contents of new subsection (c) altered to stipulate that the antler removal must be at a point within the first two inches above each pedicel. The proposed amendment would add new subsection (d) to stipulate that the department will not issue Triple T permits for desert bighorn sheep or migratory game birds. The department is itself stocking desert bighorn sheep in all suitable habitat as part of a decades-long reintroduction program, and federal law prohibits the trapping and transplanting of migratory birds. The proposed amendment also would alter the title of the section to include the shorthand name for the permit (Triple T).

The proposed amendment to §65.107, concerning Permit Application and Processing, would consist of the relocated the provisions of current §65.103(a) - (c) and (f), with modifications as noted. As noted previously in this preamble, one of the goals of the proposed amendments is to standardize the application and issuance process for Triple T permits across all species of game animals and game birds. Proposed new §65.107(a)(1) would accomplish those goals. Current paragraph (1) requires applications to be made on a form prescribed by the department. The department has steadily migrated almost all manual application systems to an online format because the ubiquity of smart phones, tablets, laptops, desktops, and other devices makes it possible to utilize automated processes to enhance administrative efficiencies. The proposed new subsection would therefore require an applicant for a Triple T permit to submit an administratively complete application via an online application. Current §65.103(b) requires an applicant for a Triple T permit to submit trap site information, release site information, the number of deer to be trapped at each trap site, and the number of deer to be released at each release site. The proposed new paragraph would require the same information as part of an administratively complete application, consisting of, at a minimum, the specific trap site information indicated on the application form, including a georeferenced map of the trap site; the specific release site information indicated on the application form, including a georeferenced map of the release site; the number of game animals or game birds to be trapped at each trap site; the number of game animals or game birds to be released at each release site; and any additional habitat, population, and monitoring information or data the department deems necessary to evaluate the prospective activity. The requirement of geospatial data, as discussed earlier in this preamble, is to enhance the department's ability to conduct contract tracing in the event that epidemiological investigations become necessary. Similarly, the proposed new paragraph broadens the applicability of the current rule language to encompass game animals and game birds, as opposed to being restricted solely to deer.

The proposed amendment to §65.107 would alter current paragraph (2) to remove a superfluous reference to the name of the permit.

The proposed amendment to §65.107 would alter current paragraph (3) would remove a reference to Urban White-tailed Deer

Removal Permits and multiple trap and release sites because proposed new paragraph (4) contains provisions governing Triple T permits for aggregate acreages which would replace those provisions.

The proposed amendment to §65.107 would add new paragraph (4) to prescribe the requirements for Triple T permits affecting multiple acreages. The department wishes to provide multiple landowners a way to bundle aggregate acreage to qualify for or maximize game animal and game bird translocation to enhance hunting opportunity. The new provision would allow Triple T permit issuance for an aggregate acreage based on a single application, provided each participating landowner's name, address, and express consent to join in the aggregate acreage is on file with the department for each tract of land comprising the aggregate acreage; each landowner agrees in writing to the number of game animals or game birds to be trapped or released on the aggregate acreage; and a single landowner has been designated in writing to be the supervisory permittee. Because the Triple T program will be administered via an online application that relates data unique to specific tracts of land enrolled in the program, aggregate acreages must be treated as a single tract for purpose of permit issuance; therefore, a single program participant must be designated to receive the permit and act as the supervisory permittee for Triple T activities.

Proposed new paragraph (6) would consist of the relocated the provisions of current §65.103(b) concerning application deadlines.

The proposed amendment would alter the provisions of current paragraph (5) to eliminate the word "agent." The proposed new definition of "landowner" includes a landowner's agent.

The proposed amendment to §65.107 would create new subsection (b) containing the relocated contents of §65.103(c)(1) - (7).

The proposed amendment to §65.109, concerning Issuance of Permit, would stipulate that except as specifically provided otherwise, permits under the subchapter will not be issued without an inspection of the prospective release sites. The department believes that it is prudent to preserve the ability to inspect a prospective release site to ensure that suitable habitat to sustain a population of released game animals or game birds exists and that the release of game animals or game birds will not be detrimental to existing populations or systems.

The proposed amendment also would remove references to the department's stocking policy, for reasons discussed previously in this preamble, specify that permit applications can be approved by employees authorized to do so, update a citation to regulations governing aerial wildlife management permits, and relocate the provisions of current §65.103(a)(1) and (2) regarding data waiver of inspection for certain properties participating in the department's Managed Lands Deer Permit Program, the submission of population and harvest data, and provisions regarding compliance with the wildlife management plan (WMP) in effect for the property. The current rule contains an obsolete reference to Level II and Level III MLD (managed lands deer) properties. The rules governing the MLDP were extensively revised in 2015, resulting in the elimination of the Level II and Level III designations, which have been replaced by what is now called the Conservation Option of the MLDP.

The proposed amendment also would clarify that the review of department decisions to deny issuance or renewal of a permit relating to deer are to be conducted in compliance with the provisions of Parks and Wildlife Code, Chapter 12, Subchapter G and Subchapter U of the chapter, which is necessary because Parks and Wildlife Code, Chapter 12, Subchapter G and Subchapter U are specific to department permits regarding deer, and the review of such decisions with respect to all other species would be conducted under the provisions of proposed new subsection (e).

The proposed amendment also would add new subsection (e) to establish provisions governing refusal of issuance of permits under the subchapter (other than permits for deer) to persons on the basis of certain previous criminal behavior involving wildlife law. The proposed new subsection would allow the department to refuse permit issuance to any person who has been finally convicted of, pleaded *nolo contendere* to, or received deferred adjudication or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 43, Subchapters C, E, F, G, H, L, or R; a provision of the Parks and Wildlife Code that is a Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the proposed new section would allow the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the new provisions and provides for a review process for agency decisions to refuse permit issuance.

The department has determined that the decision to issue a permit to hold protected live wildlife should take into account an applicant's history of violations involving the capture and possession of live animals, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of taking or allowing the take of wildlife resources to persons who exhibit a demonstrable disregard for the regulations governing wildlife. Similarly, it is appropriate to deny the privilege of holding wildlife to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported, or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred, and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of permit issuance or renewal as a result of an adjudicative status listed in the proposed amendment would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance based on adjudicative status include, but are not limited to: the number of final convictions

or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations were the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The amendment also provides for department review of a decision to refuse permit issuance or renewal. The amendment requires the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The amendment stipulates that a review panel consist of three department managers with appropriate expertise in the activities conducted under the permit in question. The new provision is intended to help ensure that decisions affecting permit issuance and renewal are correct.

The proposed amendment would also prohibit any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication for, or been assessed an administrative penalty for an offense listed in this section from participating in, assisting, or being involved with an activity authorized under this subchapter. The provision is necessary because permit activities are typically conducted by other persons in addition to the person named on the permit. The department believes that the conditions that would prevent a person from obtaining a permit should also apply to persons engaging in permitted activities under a permit.

The proposed amendment to §65.111, concerning Permit Conditions and Period of Validity, would create a new subsection (a) to stipulate that the department may place limitations on the hunting or taking of game animals or game birds at a release site that the department deems necessary to facilitate or enhance the establishment of a sustainable population. The department views the authorization for Triple T permits to be an exercise in ethical wildlife management practices and will not allow the hunting of released animals if the circumstances dictate that the population is not established or sustainable.

The proposed amendment to §65.115, concerning Notification, Recordkeeping, and Reporting Requirements, would require the notification requirements of subsection (a) to be by email. As discussed earlier in this preamble, the department is attempting to modernize formerly manual processes. The proposed amendment would also eliminate a redundancy in subsection (b) regarding the daily log required to be kept by permittees.

Mitch Lockwood, Big Game Program Director, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Lockwood also has determined that for each of the first five years that the rules as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be better organized regulations that reflect a standardized approach to the issuance of permits authorizing the trapping, transporting, and transplanting of game animals and game birds.

There will be no adverse economic effect on persons required to comply with the rule.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that because the proposed rules govern activities involving public wildlife resources that by statute cannot be bought, sold, or harvested for profit in this state (i.e., that cannot be a commercial commodity), there is therefore no direct economic effect on any small businesses, micro-businesses, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing; not create or expand an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Mitch Lockwood at (830) 792-9677, e-mail: mitch.lockwood@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendments are proposed under the authority of Parks and Wildlife Code, §43.061, which requires the commission to adopt rules for the content of wildlife stocking plans, certification of wildlife trappers, and the trapping, transporting, and transplant-

ing of game animals and game birds under Chapter 43, Subchapter E.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapter E.

§65.101. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

(1) Aggregate acreage--Contiguous tracts of land, to, from, and between which game animals and game birds have complete and unrestricted access, combined by multiple landowners to create an area of land for the purpose of trapping or releasing game animals or game birds under a permit issued under this subchapter.

(2) [~~(1)~~] Amendment--A specific alteration or revision of currently permitted activities, the effect of which does not constitute, as determined by the department, a new trapping, transporting and transplanting operation.

(3) [~~(2)~~] Certified Wildlife Trapper--An individual who receives a department-issued permit pursuant to this section.

(4) Georeferenced map--A map image incorporating a system of geographic ground coordinates, such as latitude/longitude or Universal Transverse Mercator (UTM) coordinates.

(5) Landowner--Any person who has an ownership interest in a tract of land, and includes a person authorized by the landowner to act on behalf of the landowner as the landowner's agent or manager of an aggregate acreage.

(6) [~~(3)~~] Natural Habitat--The type of site where a game animal or game bird normally occurs and existing game populations are not dependent on manufactured feed or feeding devices for sustenance.

(7) [~~(4)~~] Nuisance Squirrel--A squirrel that is causing damage to personal property.

(8) [~~(5)~~] Overpopulation--A condition where the habitat is being detrimentally affected by high animal densities, or where such condition is imminent.

(9) [~~(6)~~] Permittee--Any person authorized by a permit to perform activities governed by this subchapter.

[~~(7) Permit year--September 1 of any year to August 31 of the following year.~~]

(10) [~~(8)~~] Processing facility--The specific destination of white-tailed deer trapped and transported pursuant to a permit to trap, transport, and process surplus white-tailed deer where deer will be processed for consumption.

(11) [~~(9)~~] Qualified individual--An individual who has a wildlife management plan approved by the department.

[~~(10) Recruitment--The Fall survey estimate of the number of fawns (any deer less than one year of age) on a property.~~]

(12) [~~(11)~~] Release Site--The specific destination of game animals or game birds to be relocated pursuant to a permit issued under this subchapter.

[~~(12) Stocking Policy--The policy governing stocking activities made or authorized by the department as specified in §§52.101 - 52.105, 52.201, 52.202, 52.301 and 52.401 of this title (relating to Stocking Policy).~~]

(13) Supervisory permittee--A person who supervises the activities of permittees authorized to conduct activities.

(14) Trap Site--The specific source of game animals or game birds to be relocated pursuant to a permit issued under this subchapter.

(15) Trapping year--The period of time between September 1 of one year and August 31 of the immediately following year.

(16) [~~(15)~~] Wildlife Stocking Plans--The stocking plan for [a]:

(A) a trap site consists of the biological information about the trap site required by the department on the application for a permit under this subchapter; and

(B) a release site consists of:

(i) the biological information about the release site required by the department on the application for a permit under this subchapter; or

(ii) if the prospective activities involve deer or javelina, [~~is the same as that required for~~] a wildlife management plan (WMP) prepared under the provisions of §65.25 of this title (relating to Wildlife Management Plan).

§65.102. Disease Detection Requirements.

(a) The provisions of Subchapter B, Division 2, of this chapter apply to the movement of deer pursuant to a permit issued under this subchapter.

(b) All deer released shall be tattooed in one ear with a department-assigned identification number.

[~~(a) Except as provided in subsections (b) and (e) of this section, no permits to trap, transport, and transplant white-tailed deer or mule deer shall be issued by the department unless a sample of adult deer from the trap site equivalent to 10% of the number of deer to be transported has been tested for chronic wasting disease by the Texas Veterinary Medical Diagnostic Laboratories.~~]

[~~(1) The department will not authorize trapping activities unless the test result for each deer in the minimum required sample is 'not detected.'~~]

[~~(2) The department will not issue a permit for any activity involving a trap site from which a 'detected' result for chronic wasting disease has been obtained.~~]

[~~(3) The sample size shall be no more than 40 or less than ten animals.~~]

[~~(4) The test results required by this section shall be presented to the department prior to the transport of any deer.~~]

[~~(5) All deer released shall be marked in one ear with a department-assigned identification number.~~]

[~~(6) A test result is not valid if the sample was collected or tested prior to October 1 of the previous permit year.~~]

[~~(7) Except as provided in paragraph (8) of this section, a test result shall not be used more than once to satisfy the requirements of this section.~~]

[~~(8) If a permittee traps, transports, and transplants fewer deer than are authorized in a given permit year, that permittee may trap, transport, and transplant the remaining deer the following year from the same trap site without having to provide new samples for testing; however, the person must apply for a new Triple T permit and must re-submit the test results from the previous year. If the application~~

for a new Triple T permit specifies a number of deer greater than the remainder from the previous year, the requirements of paragraphs (1)-(4) of this subsection apply to the additional deer.]

[(b) The provisions of subsection (a) of this section do not apply to a property if:]

[(1) there have been at least 60 CWD-IHC (immunohistochemistry) test results of 'not detected' received by the department for the property; and]

[(2) there have been no results of 'detected' received by the department for the property.]

[(c) A property meeting the conditions of subsection (b) of this section continues to qualify for exemption from the provisions of subsection (a) of this section if all samples from the property continue to test 'not detected' on an annual basis. The minimum requirement for satisfying the provisions of this subsection is one deer per year or at least 3% of the number of deer moved from the property each calendar year, whichever is higher.]

[(d) The provisions of subsection (a) of this section automatically apply to any property that receives deer from a trap site that does not meet the requirements of subsections (b) and (c) of this section.]

[(e) CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property.]

[(f) Nothing in this section authorizes the take of deer. The take of deer for the purposes of this section shall be in accordance with applicable laws and regulations.]

[(g) This section does not apply to deer possessed pursuant to a permit to trap, transport, and process white-tailed deer.]

§65.103. Trap, Transport, and Transplant Permit (Triple T).

[(a) Applications may be approved without an inspection, provided the property has been issued Level II or Level III MLD Permits during the year of the release, the landowner furnishes a minimum of three years of population data and two years of harvest data, and is in compliance with all requirements of the wildlife management plan for the property:]

[(1) the number of deer to be trapped (in addition to the number of deer harvested) does not exceed the population reduction specified in the wildlife management plan for the trap site; and]

[(2) the number of deer to be released does not cause the total population of deer on the release site to exceed the total population size specified in a management plan under the provisions of §65.25 of this title (relating to Wildlife Management Plan (WMP))].

[(b) Applications received by the department between September 1 and November 15 in a calendar year shall be approved or denied within 45 days of receipt. Permits for the current trapping year will not be issued for applications received later than the first business day after January 1. To be processed, an application must contain, at a minimum, the following information as specified on department form PWD 1135A (Trap, Transport, and Transplant Permit Application):]

[(1) trap site information;]

[(2) release site information;]

[(3) the number of deer to be trapped at each trap site; and]

[(4) the number of deer to be released at each release site.]

[(c) The department may deny a permit application if the department determines that:]

[(1) the removal of game animals or game birds from the trap site may be detrimental to existing populations or systems;]

[(2) the removal of game animals or game birds may detrimentally affect the population status on neighboring properties;]

[(3) the release of game animals or game birds at the release site may be detrimental to existing populations or systems;]

[(4) the release site is outside of the suitable range of the game animal or game bird;]

[(5) the applicant has misrepresented information on the application or associated wildlife stocking plan;]

[(6) the activity identified in the permit application does not comply with the provisions of the department's stocking policy; or]

[(7) the trapping activity would involve deer held under a Deer Management Permit.]

[(d) A buck deer transported under the provisions of this subchapter shall have its antlers removed prior to transport.]

(a) [(e)] The department may establish trapping periods, based on biological criteria, when the trapping, transporting, and transplanting of game animals and game birds under this section by individuals will be permitted.

[(f) The department may, at its discretion, require the applicant to supply additional information concerning the proposed trapping, transporting, and transplanting activity when deemed necessary to carry out the purposes of this subchapter.]

(b) [(g)] Game animals and game birds killed in the process of conducting permitted activities shall count as part of the total number of game animals or game birds authorized by the permit to be trapped.

(c) A buck deer transported under the provisions of this subchapter shall have its antlers removed at a point within the first two inches above each pedicel prior to transport.

(d) The department will not issue a permit under this subchapter for an activity involving desert bighorn sheep or migratory game birds.

§65.107. Permit Application and Processing.

(a) Application. [Permit applications.]

(1) An applicant for a permit under this subchapter shall submit an administratively complete application via an online application designated by the department for that purpose. The department will not process an application that is not administratively complete. An administratively complete application is an application that provides, at a minimum, the following, as indicated on the application form:

(A) the specific trap site information indicated on the application form, including a georeferenced map of the trap site;

(B) the specific release site information indicated on the application form, including a georeferenced map of the release site;

(C) the number of game animals or game birds to be trapped at each trap site;

(D) the number of game animals or game birds to be released at each release site; and

(E) any additional habitat, population, and monitoring information or data the department deems necessary to evaluate the prospective activity.

[(1) Application for permits authorized under this subchapter shall be on a form prescribed by the department.]

(2) A single application [for a Trap, Transport, and Transplant Permit] may specify multiple trap and/or release sites; however, the permit fee prescribed by Chapter 53 of this title (relating to Finance) shall be assessed on a per-release site basis.

(3) [A single application for an Urban White-tailed Deer Removal Permit may specify multiple trap and/or release sites.] A single application for a Trap, Transport, and Process Surplus White-tailed Deer Permit may specify multiple trap sites and/or processing facilities.

(4) A single application may be submitted for an aggregate acreage, provided:

(A) the landowner's name, address, and express consent to join in the aggregate acreage is on file with the department for each tract of land comprising the aggregate acreage;

(B) each landowner agrees in writing to the number of game animals or game birds to be trapped or released on that aggregate acreage; and

(C) a single landowner has been designated in writing to be the supervisory permittee.

(5) [(4)] A single application may not specify multiple species of game birds and/or game animals.

(6) Applications received by the department between September 1 and November 15 in a calendar year shall be approved or denied within 45 days of receipt. Permits for the current trapping year will not be issued for applications received later than the first business day after January 1.

(7) [(5)] The application must be signed by:

(A) the applicant;

(B) the landowner [or agent] of each trap site [the trap site(s)]; and

(C) the landowner [or agent] of each release site [the release site(s)] or the owner or agent of each [the] processing facility, as applicable [or facilities].

(8) [(6)] The applicant may designate certain persons and/or companies that will be involved in the permitted activities, including direct handling, transport and release of game animals or game birds. In the absence of the permittee, at least one of the named persons and/or companies shall be present during the permitted activities.

(b) The department will not issue a permit if the department determines that:

(1) the removal of game animals or game birds from the trap site may be detrimental to existing populations or systems;

(2) the removal of game animals or game birds from the trap site may detrimentally affect the population status on neighboring properties;

(3) the release of game animals or game birds at the release site may be detrimental to existing populations or systems;

(4) the release site is outside of the suitable range of the game animal or game bird;

(5) the release site does not contain sufficient and/or suitable habitat to sustain a population of released game animals or game birds;

(6) the applicant has misrepresented information on the application or associated wildlife stocking plan; or

(7) the trapping activity would involve deer held under a Deer Management Permit.

§65.109. Issuance of Permit.

(a) Except as may be specifically provided otherwise, permits [Permits] authorized under this subchapter:

(1) will not be issued until the department has conducted an inspection of the prospective release sites, if the department believes inspection is warranted [will be issued, with the exception of permits to trap, transport, and process surplus white-tailed deer, only if the activities identified in the application are determined by the department to be in accordance with the department's stocking policy];

(2) will be issued only if the application and any associated materials are approved by a Wildlife Division technician or biologist authorized to approve Triple T permit applications [assigned to write wildlife management plans]; and

(3) do not exempt an applicant from the requirements of §§65.150 - 65.162 [§§55.142 - 55.152] of this title (relating to Permits for Aerial Management of Wildlife and Exotic Animals).

(b) A Triple T permit for deer may be approved without inspection of the release sites, provided:

(1) the property is enrolled and in compliance with all applicable provisions of the Conservation Option of the Managed Lands Deer Program under §65.29 of this title (relating to Managed Lands Deer (MLD) Program) during the year of the release;

(2) the landowner furnishes a minimum of three years of population data and two years of harvest data, and is in compliance with all requirements of the WMP for the property;

(3) the number of deer to be trapped (in addition to the number of deer harvested) does not exceed the population reduction specified in the wildlife management plan for the trap site; and

(4) the number of deer to be released does not cause the total population of deer on the release site to exceed the total population size specified in a management plan under the provisions of §65.25 of this title (relating to Wildlife Management Plan (WMP)).

(c) [(b)] In addition to the provisions of Parks and Wildlife Code, Chapter 12, Subchapter G, the department may refuse permit issuance or renewal relating to deer as provided in Subchapter U of this chapter (relating to Authority to Refuse to Issue or Renew Permit).

(d) [(c)] The department shall conduct all reviews of department decisions to deny issuance or renewal of a permit relating to deer under this subchapter in compliance with the provisions of Parks and Wildlife Code, Chapter 12, Subchapter G and Subchapter U of this chapter.

(e) The department may refuse to issue a permit under this subchapter relating to game birds and any game animal other than deer to any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or assessed an administrative penalty for a violation of:

(1) Parks and Wildlife Code, Chapter 43, Subchapter C, E, F, G, H, L, or R;

(2) a provision of the Parks and Wildlife Code that is not described by paragraph (1) of this subsection that is punishable as a Parks and Wildlife Code:

(A) Class A or B misdemeanor;

(B) state jail felony; or

(C) felony;

(3) Parks and Wildlife Code, §63.002; or

(4) the Lacey Act (16 U.S.C. §§3371-3378).

(f) The department may refuse to issue a permit under this subchapter relating to game birds and any game animal other than deer to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from obtaining a permit.

(g) An applicant for a permit under this subchapter relating to game birds and any game animal other than deer may request a review of a decision of the department to refuse issuance of a permit.

(1) An applicant seeking review of a decision of the department with respect to the issuance or renewal of a permit must request the review within 10 working days of being notified by the department that the application has been denied.

(2) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(3) The department shall conduct the review within 30 days of receipt of the request required by paragraph (2) of this subsection, unless another date is established in writing by mutual agreement between the department and the requestor.

(4) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in wildlife management, appointed or approved by the executive director, or designee.

(5) The decision of the review panel is final.

(h) No person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication for, or assessed an administrative penalty for an offense listed in this section may participate, assist, or be involved with an activity authorized under this subchapter.

§65.111. Permit Conditions and Period of Validity.

(a) The department may place limitations on the hunting or taking of game animals or game birds at a release site that the department deems necessary to facilitate or enhance the establishment of a sustainable population.

(b) [~~(a)~~] A permittee may distribute the cost of permitted activities by entering into cost-sharing agreements with other parties involved, but such cost-sharing arrangements shall not violate the provisions of §65.117 of this title (relating to Prohibited Acts).

(c) [~~(b)~~] If it is determined by the department that any condition listed on the permit has been violated, the department may suspend the permit after notifying the supervisory permittee that a violation has occurred. All contested cases shall be conducted pursuant to the provisions of Government Code, Chapter 2001.

(d) [~~(c)~~] With the exception of permits to trap, transport, and process surplus white-tailed deer where deer at the trap site pose a threat to human health and safety, permits issued pursuant to this subchapter shall expire at the end of the specified trapping period for that species. The maximum period of validity for a permit issued under this subchapter shall not exceed one year.

(e) [~~(d)~~] Unattended trapping equipment and devices at trap sites within incorporated areas shall be labeled with the owner's name, complete address, and telephone number; the date of trap site establishment; and the date the trap site was last visited.

(f) [~~(e)~~] Unattended trap sites that may pose a human health and safety hazard shall be clearly marked as such.

§65.115. Notification, Recordkeeping, and Reporting Requirements.

(a) Except as specifically authorized by the department in the provisions of a permit, no [~~No~~] person shall trap, transport, or release a game animal or game bird under a permit authorized by this subchapter unless that person has notified the department not less than 12 hours nor more than 48 hours prior to each instance of trapping, transportation, or release. Notification shall be by email to [~~fax or telephone contact with~~] the Law Enforcement Communications Center in Austin, and shall consist of:

(1) in the case of trapping or transport, the supervisory permittee's name, permit number, and the date(s) that the trapping or transport will occur; and

(2) in the case of release, the date, time, and specific location of the release.

(b) A supervisory permittee shall maintain [~~, keep current,~~] and furnish upon request by a department employee acting within the scope of official duties a current daily activity log containing:

(1) the number of game animals or game birds trapped;

(2) the sex of game animals or game birds trapped;

(3) the locations where game animals or game birds were trapped and released or processed;

(4) the dates when trapping occurred;

(5) the trapping methods used;

(6) any mortality incurred during the permitted activity and the disposition of carcasses; and

(7) any completed financial disclosure forms required by subsection (d) of this section.

(c) The supervisory permittee shall file a report on a form provided by the department not later than 30 days following the expiration date of the permit. The report shall include, at a minimum:

(1) the number of game animals or game birds trapped;

(2) the sex of game animals or game birds trapped;

(3) the locations where game animals or game birds were trapped and released or processed;

(4) the dates when trapping occurred;

(5) the trapping methods used;

(6) any mortality incurred during the permitted activity and the disposition of carcasses; and

(7) the completed financial disclosure forms required by subsection (d) of this section.

(d) Upon the completion of trapping activities authorized by a permit under this subchapter, the supervisory permittee shall complete and sign a department-supplied financial disclosure form. The form shall also be signed by the landowner of the trap site (or a full-time employee of the landowner who is authorized to act on the landowner's behalf) prior to the transport of any game animal or game bird. Upon the release or delivery to a processing facility of the game animals or game birds, the form shall be signed by the owner of the release site or processing facility (or a full-time employee of the landowner who is authorized to act on the landowner's behalf or an authorized representative of the processing facility). In the instance that a permit authorizes multiple release sites or processing facilities, a separate depart-

ment-supplied financial disclosure form shall be required for each trap site/release site or processing facility combination. The form shall be supplied by the department to the supervisory permittee and shall be retained as provided by subsection (b) of this section.

(e) All game animals or game birds that die as a result or in the course of activities conducted under a permit issued under authority of this subchapter shall be kept in an edible condition until disposed of by one of the following methods:

(1) documented donation to charitable organizations, public hospitals, orphanages, or indigent persons;

(2) documented transfer or donation to other persons authorized to receive such specimens under a license or permit issued by the department; or

(3) special disposition as prescribed in writing by the department.

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

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Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER D. DEER MANAGEMENT PERMIT (DMP)

31 TAC §65.133

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §65.133, concerning General Provisions. The proposed amendment consists of several changes. The proposed amendment would replace the word "wild" with the term "free-ranging." Under Parks and Wildlife Code, §43.601, the department may issue a permit for the management of the wild white-tailed deer population on acreage enclosed by a fence capable of retaining white-tailed deer (under reasonable and ordinary circumstances) and capable of preventing entry by a white-tailed deer. Under Parks and Wildlife Code, §1.011, all wild animals inside the borders of this state are the property of the people of this state. Parks and Wildlife Code, §1.101, defines "wild," when used in reference to an animal, to mean a species, including each individual of a species, that normally lives in a state of nature and not ordinarily domesticated. The current terminology in §65.133 is imprecise because the distinction it is intended to address is between deer held in captivity and deer that are free-ranging (i.e., capable of coming and going at will). Parks and Wildlife Code, §1.011, is unambiguous: all individual deer, whether free-ranging or captive, are wild and are the property of the people of the state. The proposed amendment would remedy that imprecision. The proposed amendment also would remove a reference to breeder deer as being private property, which is erroneous for the reasons described earlier.

The proposed amendment would also update references to statute and other rules of the department that are referenced in §65.133. The current rule refers to "Scientific Breeder's Permit." In 2017, the Texas Legislature amended Parks and Wildlife Code, Chapter 43, Subchapter L to rename that permit the deer breeder's permit. Similarly, the current rule refers to the department's Managed Lands Deer Program with language that is no longer accurate, as the rules governing that program have been moved. Therefore, the proposed amendment would introduce the correct references and terminology in subsection (e). The proposed amendment to subsection similarly corrects a reference to a section title.

Mitch Lockwood, Big Game Program Director, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Lockwood also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be clear, accurate, and unambiguous rules.

There will be no adverse economic effect on persons required to comply with the rule.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that because the proposed rule regulates a resource management program administered by the department for the sole purpose of enhancing the enjoyment and use of public wildlife resources that by statute cannot be bought, sold, or harvested for profit in this state (i.e., that cannot be a commercial commodity), there is therefore no direct economic effect on any small business, micro-business, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government pro-

gram; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create or expand an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Mitch Lockwood at (830) 792-9677, e-mail: mitch.lockwood@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §43.603, which provides that a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter R, is subject to conditions established by the commission.

The proposed amendment affects Parks and Wildlife Code, Chapter 43, Subchapter R.

§65.133. General Provisions.

(a) (No change.)

(b) Except as provided in subsection (c) of this section, any deer introduced into a pen containing deer detained under a DMP become free-ranging [~~wild~~] deer and must be released according to the provisions of §65.136 of this title (relating to Release of Deer).

(c) If approved under the deer management plan, buck deer held under the provisions of Subchapter T of this chapter (relating to Deer Breeder Permits [~~Scientific Breeder's Permit~~]) may be introduced into a pen containing deer detained under a DMP. Such deer [~~remain private property and~~] may be recaptured; however, any such deer within the pen when [~~wild~~] deer are released under the provisions of §65.136 of this title [~~(relating to Release)~~] become free-ranging [~~wild~~] deer.

(d) (No change.)

(e) The holder of a DMP is entitled to the issuance of Managed Lands Deer Program tags [~~Permits~~] subject to the provisions of §65.29 [~~§65.26~~] of this title (relating to Managed Lands Deer (MLD) Program [~~Permits~~]).

(f) - (g) (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.

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Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
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SUBCHAPTER T. DEER BREEDER PERMITS

The Texas Parks and Wildlife Department proposes the repeal of 31 TAC §65.604, amendments to §§65.601 - 65.603, 65.605, and 65.610 - 65.612, and new §65.604, concerning Deer Breeder Permits. In general, the amendments harmonize the subchapter with the contents of Chapter 65, Subchapter B, concerning Disease Detection and Response, but also make specific substantive and non-substantive changes as noted.

Prior to 2015, the department's regulatory apparatus for detecting chronic wasting disease (CWD) in deer breeding facilities was contained in this subchapter (Chapter 65, Subchapter T). The testing standards imposed by the rules were considered to be at best minimally efficacious for detecting CWD in captive deer populations and were intended to be the least burdensome regulatory footprint possible in light of the fact that up to that point in time, CWD had not been discovered in captive breeding facilities in Texas. However, with the discoveries of multiple CWD-positive deer in deer breeding facilities in 2015 and 2016, the department adopted rules that imposed more robust testing protocols and movement restrictions. Those rules are contained in Chapter 65, Subchapter B, and supersede the testing rules currently contained in Chapter 65, Subchapter T.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is no scientific evidence to indicate that CWD is transmissible to humans. What is known is that CWD is invariably fatal to cervids and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease correlates with deer population declines, and human dimensions research suggests that hunters will avoid areas of high CWD prevalence. Additionally, the apparent persistence of CWD in contaminated environments represents a significant obstacle to eradication of CWD from either captive or free-ranging cervid populations.

The proposed repeal of §65.604, concerning Disease Monitoring, is necessary because the section is now superfluous and unnecessary, since disease monitoring and testing requirements for CWD, including those for deer breeders and persons who obtain or receive deer from deer breeders, are contained in Chapter 65, Subchapter B.

The proposed amendment to §65.601, concerning Definitions, would eliminate the definitions for "accredited test facility," "certified wildlife biologist," "release," and "sale." The definition for "accredited test facility" is no longer necessary since disease monitoring and testing requirements for CWD are contained in Chapter 65, Subchapter B. The proposed amendment to §65.603(b) would create a "certified facility inspector" function to replace that previously performed under the rubric of "certified wildlife biologist," which the department has determined is not an appropriate descriptor of the activities being performed. The definitions for "release" and "sale" are being eliminated because the department is using the term "transfer" to encompass all situations in which a transfer permit is required, which includes purposes of release and/or sale. For the same reasons, the proposed amendment would alter the definition of "transfer permit" to simply state that a transfer permit is a permit authorizing

the movement of breeder deer to any person or registered facility authorized to possess or receive breeder deer. Finally, the proposed amendment would replace the term "unique number" with "unique identifier" to be consistent with terminology used in Parks and Wildlife Code, §43.3561, and clarify that a unique identifier is issued by the department to the deer breeder, who will ultimately assign the number to a breeder deer born in that permit holder's facility.

The proposed amendment also would alter the definition of "facility" to specify that enclosures within a facility must be contiguous (physically bordering or adjoining each other; connected). The department, in consultation with Texas Animal Health Commission (TAHC), is managing CWD-positive deer breeding facilities that in some cases consist of multiple enclosures that are not contiguous with each other and in some instances are separated by miles of pasture land or private and county roads. Under current rules, deer can be moved between such enclosures without activation of transfer permits. Consequently, neither the department nor TAHC have accurate records documenting which non-contiguous enclosure any particular deer is actually in, or any documentation of movement history between enclosures, which challenges both agencies' disease-management strategies. Requiring a separate facility identification number for each enclosure that is physically separate from other enclosures and requiring a transfer permit to be activated to transfer deer between such enclosures is a prudent disease management and prevention action that is expected to introduce minimal, if any, burden on the permittee; however, the department notes that proposed amendment would require persons who wish to maintain multiple enclosures that are not contiguous to obtain a separate deer breeding permit for each enclosure that is not contiguous to other enclosures.

The proposed amendment to §65.602, concerning Permit Requirement and Permit Privileges; General Provisions, would clarify subsection (a) to provide that a person may possess live deer in this state by means other than a permit (e.g., an authorization to temporarily retain breeder deer in an enclosure to allow them to acclimate to a release site), and remove a generic reference to the subchapter in favor of a reference to a specific provision of the Parks and Wildlife Code that enumerates the specific statutory privileges enjoyed by the holder of a deer breeder's permit. As mentioned previously in this preamble, the department is replacing terms such as "sale" and "release" with the term "transfer" because most if not all instances in which a breeder deer is moved require the activation of a transfer permit; those changes are made throughout the proposed rulemaking. Similarly, the proposed amendment would eliminate current paragraphs (b)(4), (6) and (7) because the activities addressed in those provisions are also effected by activation of a transfer permit. The proposed amendment also would add new subsection (d) to stipulate that registered breeding facilities may possess only white-tailed deer or only mule deer. The department will not issue a permit allowing both species of deer to be kept in a single facility, which is necessary to eliminate the possibility of accidental or intentional commingling of species and hybridizing. Similarly, the proposed amendment would add new subsection (e), which would stipulate that other than deer that are not required to be identified and reported to the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L, no deer, livestock, exotic livestock, or similar animals may be present in, confined in, or have access to a deer breeding facility other than the deer listed on the reconciled herd inventory for the facility reported to the department, which is necessary to reduce disease risks that could be introduced by other animals and not limited to CWD-susceptible species.

The proposed amendment to §65.603, concerning Application and Permit Issuance, would clarify application requirements with respect to the infrastructure of a prospective deer breeding facility, require an inspection of the facility to performed by a facility inspector authorized by the department, and establish the minimum requirements for a person to become an authorized facility inspector.

The proposed amendments would clarify several areas regarding the content of applications for deer breeder permits. The current rules require an applicant to "submit a completed application to the department." The application requires, among other things, a plat of the prospective facility (to include individual enclosures, the dimension and size of each enclosure; the approximate location of feeding and watering devices within each enclosure, the approximate location of man-made and/or natural shelters, and the location of all fences and gates). In addition, the application requires a letter of endorsement from a certified wildlife biologist attesting that the prospective facility meets the department's regulatory requirements for facility standards; deer are not currently within the facility; that deer eventually introduced to the facility will have adequate access to food, water, and shade and/or shelter; the facility identified in the application is fully constructed and functional; and any additional information the biologist deems pertinent. The department has determined that the contents of the application relating to facility infrastructure should be specified by rule in order to avoid misunderstandings, confusion, or the implication that the information required in an application is voluntary rather than mandatory or that the accuracy of the information is open to interpretation by the applicant. To that end, the proposed amendment to §65.603 would require an application to include a diagram of the facility that clearly defines each distinct enclosure within the facility, including fences and gates, and would explicitly require the letter of endorsement from an authorized pen inspector to affirm that the infrastructure of a prospective deer breeding facility is adequate for the humane treatment of breeder deer (including adequate access to food, continuous supplies of water and ample cover or shelter), has been secured to prevent ingress to and egress from the facility by animals similar to deer or livestock, and that no animals similar to deer or livestock are present within the facility.

The proposed amendment to §65.603 also would alter current rules regarding facility inspections. Under current rule, prospective deer breeding facilities must be inspected by a certified wildlife biologist as a condition of potential licensure. The department has determined that although it is necessary to require facility inspections and to require them to be performed by persons with the educational and experiential background necessary to do so effectively, it is not necessary to require accreditation as a certified wildlife biologist. Therefore, proposed new subsection (b) would stipulate that an authorized facility inspector be a person not employed by the department who has been awarded a bachelor's degree or higher in wildlife science, wildlife management, or related discipline; has at least three years of post-graduate experience associated with breeder deer within the five-year period preceding any facility inspection activity; has no record within the previous five years of non-compliance with department regulations regarding breeder deer herd inventories; and has not been finally convicted of or been assessed an administrative penalty for a legal violation that would prevent the person from being an agent or surrogate for a deer breeder under applicable department rules in Chapter 65,

Subchapter U. The department reasons that it is appropriate to prohibit persons who exhibit a demonstrable disregard for laws and regulations governing wildlife from acting as an authorized facility inspector for the purposes of the subchapter.

The proposed amendment to §65.603 also would stipulate that additions to a facility must be approved by the department. Current rules require permittees to submit an accurate diagram of the facility indicating all changes to the facility; however, it is not explicitly stated that the diagram must be updated each time a change is made to the facility. The proposed amendment would remedy that.

Finally, the proposed amendment to §65.603 would amend a reference to a subsection within the section, which is necessary because the designation of the referenced subsection would change as a result of the proposed amendments.

Proposed new §65.604, concerning Disease Monitoring, would provide a reference to Chapter 65, Subchapter B, Division 2, concerning Chronic Wasting Disease - Movement of Deer, which contains applicable provisions governing disease management with respect to breeder deer.

The proposed amendment to §65.605, concerning Holding Facility Standards and Care of Deer, would amend subsection (a) to clarify that facility fencing requirements apply to all facilities authorized to hold breeder deer, including nursing and medical facilities.

The proposed amendment to §65.605 would also add new subsection (b) to require permittees to ensure that deer in a breeding facility have access to adequate food, water, and cover. Although the pen inspection required by §65.603, concerning Permit Application and Issuance, requires attestation that adequate food, a continuous supply of water, and ample cover or shelter is provided at any given breeding facility, the department believes it is important to stipulate that those things are not simply conditions for permit issuance, but expectations of day-to-day operations. The current rule does not explicitly address food, water, or shelter requirements, as the department has thus far considered that since breeder deer are at least anecdotally very valuable to deer breeders, it should be axiomatic that deer breeders would protect the deer they are permitted to possess; however, the department has become aware of situations in which permittees have failed to provide what the department considers to be basic standards of animal care, and in at least one instance a deer breeder has been cited for animal cruelty. Therefore, the department believes it is necessary to provide for such standards by rule.

The proposed amendment also would alter current subsection (b) to specify notification requirements for deer breeders in the event that a deer escapes from a breeding facility. Under current rule, a permittee must notify the department immediately upon discovering the escape of a deer from the breeding facility, which initiates a ten-day window for recapture efforts and provides for an additional five-day period provided the permittee proves to the department's satisfaction that reasonable efforts have been made to recapture the deer. The department has encountered situations in which it is difficult to ascertain the nature and progress of a permittee's efforts to recapture escaped deer, which is problematic from a disease management perspective. Therefore, the proposed amendment would require the notification to include a detailed description of the permittee's intended efforts to recapture the deer, including the methods, dates, and times of attempted recapture efforts and a daily notification of the execution of those recapture efforts. The proposed amendment also would eliminate the additional five-day period for recapture and allow recapture and reintroduction to a deer breeding facility after 10 days only if the department approves that action for disease management purposes. The department believes that 10 days is sufficient time for bona fide recapture attempts to take place, and that reintroduction of escaped deer after that time is warranted only if the department has determined it is necessary, based on the CWD status of the facility in question and that of the surrounding landscape to which the deer has escaped.

The proposed amendment to §65.605 also would add new subsection (d) to address the failure to recapture breeder deer that escape from a deer breeding facility that is prohibited by law from receiving or transferring breeder deer under the provisions of Chapter 65, Subchapter B, Division 2 at the time of or subsequent to the escape. The proposed new subsection would address such instances by requiring the implementation of a disease-testing plan for the property where the breeding facility is located and any contiguous tract of land under common ownership. The disease-testing plan would specify CWD testing and reporting requirements for deer harvested on the affected properties and additional CWD testing requirements in the deer breeding facility. The intent of the proposed new subsection is to address concerns regarding deer that have escaped from breeding facilities known to be of epidemiological concern with respect to CWD.

The proposed amendment to §65.610, concerning Transfer of Deer, would amend subsection (a) to clarify that transfer permit requirements apply to breeder deer in a trailer or vehicle. The current provision requires activation of a transfer permit when deer are moved into or out of a facility but does not specifically indicate an exact point in time at which the transfer permit activation must occur. The department has determined that it is reasonable to assume that transfer activities have started when deer are loaded into a trailer or vehicle; thus, the proposed amendment would require a transfer permit to have been activated prior to deer being possessed in a trailer or vehicle.

The proposed amendment also would alter subsection (b) to comport its contents with the disease management provisions of Chapter 65, Subchapter B, which, as noted previously in this preamble, governs the movement of breeder deer pursuant to disease management regulations. The proposed amendment would eliminate paragraphs (1) - (4) and (6) and add clarifying language to the remaining paragraphs to comport terminology.

The proposed amendment also would add new subsection (c) to stipulate that white-tailed deer and mule deer may not be transferred to any facility located in a county for which there is no open season for that species. The department believes that it is biologically irresponsible to allow breeder deer to be transferred to destinations outside of the natural or historic range of the species, especially in light of the nearly 3,000 reported escapes of breeder deer and the 9,687 breeder deer that department inspections have determined cannot be accounted for by permittees responsible for such deer. Desert mule deer have evolved in and are adapted to a specific historical range in West Texas; to allow desert mule deer to be transferred to facilities outside their historic native range would introduce a host of potential known and unknown problems (transmission of diseases, parasites, etc.) that the department believes can be avoided by prohibiting movement outside of historic range.

The proposed amendment would eliminate the contents of current subsection (c) because they are superfluous in light of

other provisions governing transfer permits (addressed earlier in this preamble) and replace them with the contents of current §65.610(d)(1), which provides that the department will not authorize the release of deer if the release would detrimentally affect existing populations or systems.

The proposed amendment would alter current subsection (d) by removing paragraph (1) as discussed previously in this preamble.

The proposed amendment would alter the provisions of current subsection (e) to clarify that the deer specifically identified on the transfer permit are the only deer that may be moved under the transfer permit during the 48-hour time period authorized by the permit, and that a transport manifest identifying the specific deer in possession while in transport must be physically possessed by the person in possession of the deer during transport if the transfer involves multiple trips, vehicles, or destinations. The intent of the proposed amendment is to remove any ambiguity as to what a transfer permit applies to or what a transfer permit specifically authorizes. The department has encountered situations in which permittees have activated a transfer permit, but the transfer permit does not accurately identify the deer in the transport vehicle or even the number of deer in the transport vehicle. Sometimes there are situations when a deer breeder makes multiple trips or uses multiple transport vehicles to complete a transfer, and it is important that each shipment of deer is accompanied by a transport manifest clearly identifying the specific deer on the transport vehicle. The department believes that it is reasonable to expect that in any given instance of transport, the deer in a trailer or means of transportation are in fact the deer identified on the transfer permit as the deer being transported.

Under the provisions of current subsection (e)(3), a transfer permit may be activated by phone or online. The proposed amendment would require all permit activations to be executed online, but would also provide for activation by phone or email in the event the department's online system is unavailable. The department believes that the ubiquity of smart phones, tablets, laptops, and other devices makes phone notification unnecessary except in special circumstances.

The proposed amendment would non-substantively alter current subsection (e)(4) to clarify that the current requirement that an application for a transfer permit indicate the source and destination of the deer being moved and includes the facility identification numbers assigned by the department to the source and destination facilities. Similarly, the proposed amendment would alter current subsection (e)(5) to replace "all activities" with "movement of deer" for purposes of improved precision.

The proposed amendment to current subsection (e)(6) would replace "veterinarian" with "veterinarian's medical facility for emergency medical treatment" to more precisely describe the destination and conditions under which a breeder deer may be transported without activation of a transfer permit, and would amend the provision to require that if deer moved without a transfer permit under the provision are removed from the means of transportation and temporarily housed in a location that may house other susceptible species at any point between departure from the source facility and return to the source facility, a transfer permit must be activated prior to the return of the deer to the source facility. The proposed new provision is necessary for epidemiological contact tracing in the event that the deer or the source facility become part of an epidemiological investigation at a later date. The proposed amendment would also clarify that an eligible-aged breeder deer that dies at or while being transported to or from a veterinary facility under the provisions of the proposed amendment is considered to be an eligible mortality for the purposes of the department's CWD management rules contained in Chapter 65, Subchapter B.

The proposed amendment to §65.611, concerning Prohibited Acts, would consist of several actions. The proposed amendment would alter the provisions of subsection (b) to state that it is an offense to possess or place breeder deer in any place or facility if the herd inventory on file with the department does not account for the deer, which is necessary for purposes of disease control.

The proposed amendment also would add new subsection (d) to prohibit the possession of a breeder deer in a nursing facility later than 120 days following the deer's birth. The current rules allow the transport of fawns to nursing facilities in order to provide nourishment until the fawns are self-sufficient. It is a generally accepted fact of deer biology that fawns have been weaned within the first 120 days of life. The department believes that fawns should be returned to their respective breeding facilities when they are capable of feeding on their own.

The proposed amendment also would add new subsection (e) to prohibit the commingling and/or interbreeding of white-tailed deer and mule deer. White-tailed deer and mule deer have different breeding strategies, breeding chronologies, habitat preferences, and predator evasion behaviors, all of which are important in sustaining populations. Hybrids in captivity have shown escape behaviors that are chaotic, confused, and would lead to lower survival probabilities. It is documented in research facilities that hybrids have a higher mortality rate than purebred white-tailed deer or mule deer, and research indicates that hybrid fawns have low survival rates. The department has determined that allowing the production of hybrids and/or their release is unwise.

The proposed amendment would also add new subsection (i) to specifically emphasize that an authorized facility inspector commits an offense by submitting the checklist or letter of endorsement required by the proposed rules if that person has not personally conducted an onsite inspection of the facility in question. The department notes that the offense would be a Class C Misdemeanor, which would give the department a less serious option to pursue for minor infractions, as opposed to a felony or Class B Misdemeanor prosecution for falsification of a government record that is also possible based on the same conduct.

The proposed amendment would also add new subsection (j) to clarify that it is an offense for any person to violate or fail to comply with the provisions of a disease-testing plan issued under the provisions of §65.605(d). Although the rules as proposed would require a permittee under certain specific circumstances to follow a disease-testing plan following the failure to capture an escaped deer, and failure to do so would constitute a violation of permit provisions and therefore be an offense, the department believes it is important to emphasize that failure to comply with the disease-testing plan is an offense.

The proposed amendment would add new subsection (k) to prohibit the cloning of white-tailed or mule deer except as specifically authorized under a department-issued permit. The department strongly believes that the unknown and unforeseeable biological consequences resulting from the cloning of native wildlife make it imperative to prohibit any such activity except for one possibility, which is credible scientific research predicated on a compelling scientific need.

The proposed amendment would add new subsection (l) to prohibit the possession of deer, livestock, exotic livestock, or similar animals in a deer breeding facility, or allow such animals to access a deer breeding facility.

Finally, the proposed amendment to §65.612, concerning Disposition of Deer, would make non-substantive change to comport the terminology in the section with changes made elsewhere in the proposed rules to standardize terminology with respect to transfer permits.

Mitch Lockwood, Big Game Program Director, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules, as the rules will be administered and enforced by existing staff as part of their regular duties.

Mr. Lockwood also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be in addition to better organized and more user-friendly regulations, a reduction of the probability of CWD and other diseases being spread to or from facilities and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas. Additionally, the protection of free-ranging deer herds will have the simultaneous collateral benefit of protecting captive herds and maintaining the economic viability of deer breeding operations.

There will be adverse economic effects on persons required to comply with the rule. Those effects will be identical to the effects on small and microbusinesses described later in this preamble.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers direct economic impact to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

There are currently 957 persons holding a deer breeder's permit. The department does not have access to financial records of permittees; therefore, to ensure that this analysis does not inadvertently exclude any small business or microbusiness, the department assumes that all deer breeders are small or microbusinesses.

The proposed rules would require a facility to consist of contiguous enclosures, which means that permittees who currently operate facilities containing non-contiguous enclosures would either have to consolidate their deer in a single facility or obtain a deer breeder's permit for each non-contiguous enclosure. Department records indicate that 107 permittees have facilities with enclosures that are not contiguous (82 of those facilities have two enclosures that are not contiguous, 21 facilities have three enclosures that are not contiguous, three facilities have four enclosures that are not contiguous, and one facility has five enclosures that are not contiguous). Therefore, the department estimates the cost of compliance to range from $0 (if all breeder deer are moved to a single facility) to multiples of $200 (depending on the number of non-contiguous enclosures for which a permit is sought) to a maximum of $1,000 (for the permittee with five non-contiguous enclosures, if a new permit is sought for each of the five enclosures). Additionally, the proposed rules could result in direct costs associated with current regulatory requirements regarding CWD surveillance testing, depending on the course of action selected by permittees whose facilities consist of non-contiguous enclosures. Current disease management rules (§65.95, concerning Movement of Breeder Deer) condition the ability to transfer breeder deer to, from, or between facilities on the results of mandatory continuous surveillance testing for CWD in each facility. The proposed rules, by requiring each non-contiguous enclosure to be a separate facility, would necessitate independent surveillance testing in each non-contiguous enclosure, which could result in additional testing costs, depending on the number of deer the permittee places in each such enclosure, the number of mortalities within that enclosure through time, the extent to which a permittee utilizes ante-mortem testing to maintain transfer status (ante-mortem tests require utilization of a veterinarian and are more expensive), and changes in CWD status resulting from the transfer of deer (if any) into or out of the enclosure. Because potential outcomes are dependent on multiple independent decision variables that are unknown to the department and cannot be predicted, it is impossible to precisely quantify the possible impacts to each of the 107 permittees that could be affected; however, the department estimates the impacts to affected permittees could range from no cost (if any given permittee consolidates all breeder deer in a single enclosure or set of contiguous enclosures) to higher costs (if the permittee allocates breeder deer to enclosures under new permits in such a fashion that additional ante-mortem testing is required to maintain movement qualified (MQ) status for the deer in each new facility). The highest possible cost to any permittee would be to the one permittee with five non-contiguous enclosures. Assuming the permittee distributed the total population of deer held under the permit equally amongst five new facilities and depended solely upon ante-mortem testing to maintain MQ status, the department estimates a maximum additional cost of compliance of $2,250.

The department considered several alternatives to the proposed rule. The department considered status quo, which was rejected because when epidemiological investigations are necessary it is imperative to know the movement history of each breeder deer in order to conduct contact tracing for deer that may subsequently have come into contact with suspect deer or deer environs. The department considered implementing a system allowing satellite enclosures with special notification and reporting requirements, which was rejected for reasons of avoiding unnecessary introduction of complexity to administration, enforcement, compliance, and disease tracing.

The proposed new rules would require that deer held under a breeder permit not be commingled with other deer, exotic species, or livestock. The department has no method to determine how many permittees would be affected by the proposed provisions but has determined that there could be some direct costs associated with segregating currently commingled menageries. The department has determined that such direct costs would be minimal, consisting of the labor and time nec-

essary to remove all individuals other than the breeder deer from spaces that are inhabited by and accessible to only the breeder deer. The department considered several alternatives to the rules as proposed. The department considered following the status quo, which was rejected because the purpose of the proposed rule is to segregate breeder deer from all other animals for purposes of managing and mitigating possible CWD and other disease transmission. Another alternative that was considered was to require some sort of periodic inspection and/or testing of other animals kept in the same facility with white-tailed deer or mule deer, which was rejected because of concerns with statutory authority with respect to species other than indigenous wildlife and administrative complexity. Another alternative that was considered was to prohibit commingling of any species susceptible to CWD with breeder deer in a deer breeding facility, which was rejected because of concerns related to diseases other than CWD that could be transmitted to deer, including but not limited to bovine tuberculosis and epizootic hemorrhagic disease.

The proposed amendment would prohibit the cloning of deer under a deer breeder's permit. The department is not aware of specific business models involving cloned deer but speculates that they could range from creating viable individuals for sale to propagating embryos to be sold or used for purposes of implantation in surrogate mothers. In any case, the department estimates that the proposed prohibition on cloning will not result in a direct adverse economic impact to any permittee, as the department is not aware of any permittees presently cloning deer and there are numerous other ways to propagate deer that are less costly than cloning. The department considered several alternatives to the proposed rule. The department considered remaining silent on the matter from the point of regulatory restraints. This alternative was rejected because the purpose of the rule is to prevent unintended negative consequences to populations of naturally occurring deer that could result from allowing the use of a technology that is not fully understood and cannot be definitively said to be free of negative outcomes. The department also considered allowing cloning under a set of special regulations specifically designed to carefully analyze and assess progress towards assurances of non-negative impacts to native populations of deer, which was rejected for reasons of administrative complexity and impacts to the regulated community. The department reasons that independent bona fide research activities will ultimately provide greater knowledge upon which to base future regulatory decisions.

The proposed rules will not affect rural communities.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee (but could in some circumstances result in additional fees for non-contiguous enclosures if the deer breeder chooses to have them registered as facilities); not create a new regulation; expand existing regulations (by altering rules governing the use of transfer permits; requiring harvest management plans for properties under common ownership that adjoin NMQ facilities from which deer have escaped and not been recaptured; prohibiting the commingling of breeder deer with other animals; and prohibiting the cloning of breeder deer) but not limit an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Mitch Lockwood at (830) 792-9677, e-mail: mitch.lockwood@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

31 TAC §§65.601 - 65.605, 65.610 - 65.612

The amendments and new section are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed new rules affect Parks and Wildlife Code, Chapter 43, Subchapter E, and Chapter 61.

§65.601. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

~~[(1) Accredited test facility--A laboratory approved by the United States Department of Agriculture to test white-tailed deer or mule deer for Chronic Wasting Disease.]~~

(1) ~~[(2)]~~ Authorized agent--An individual designated by the permittee to conduct activities on behalf of the permittee. For the purposes of this subchapter, the terms 'deer breeder' and 'permittee' include authorized agents.

~~[(3) Certified Wildlife Biologist --A person not employed by the department who has been certified as a wildlife biologist by The Wildlife Society, or who:]~~

~~[(A) has been awarded a bachelor's degree or higher in wildlife science, wildlife management, or a related educational field; and]~~

~~[(B) has not less than five years of post-graduate experience in research or wildlife management associated with white-tailed deer or mule deer within the past 10 years.]~~

(2) ~~[(4)]~~ Facility--One or more contiguous enclosures, in the aggregate and including additions, that are the site of deer breeding operations under a single deer breeder's permit.

(3) ~~[(5)]~~ Movement qualified--A status, determined by the department, under which the transfer ~~[removal]~~ of deer to or from a facility is authorized.

[(6) Release--The intentional release of a live deer from a permitted facility, or from a vehicle or trailer at a location other than a facility.]

[(7) Sale--The transfer of possession or the delivery and release of deer for consideration and includes a barter and an even exchange.]

(4) [(8)] Serial Number--A permanent four-digit number assigned to a deer breeder by the department. A serial number shall be preceded by the prefix "TX".

(5) [(9)] Transfer permit--A permit authorizing the movement of breeder deer to or from a facility [a breeder facility, a nursing facility, or a deer management permit facility other than to an accredited veterinarian for medical purposes].

(6) [(10)] Unique identifier--As defined by Parks and Wildlife Code, §43.3561(a)(5). [Unique number--An alphanumeric number of not more than four characters assigned by the department to the breeding facility in which the breeder deer was born and unique to that breeder deer.]

§65.602. Permit Requirement and Permit Privileges; General Provisions.

(a) Except as provided in this chapter, no person may possess a live deer in this state unless that person possesses:

(1) a valid permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R; or[.]

(2) specific written authorization under the provisions of this subchapter.

(b) In accordance with Parks and Wildlife Code, §43.357 [Except as otherwise provided by this subchapter], a person who possesses a valid deer breeder's permit may:

(1) engage in the business of breeding legally possessed breeder deer within the facility for which the permit was issued;

(2) [purchase or otherwise lawfully] take possession of breeder deer transferred from another facility in compliance with the provisions of this chapter [lawfully possessed by another deer breeder];

(3) [sell or] transfer breeder deer that are in the legal possession of the permittee; and

[(4) release breeder deer from a permitted facility into the wild as provided in this subchapter;]

(4) [(5)] except as provided by this subchapter, recapture lawfully possessed breeder deer that have been marked in accordance with Parks and Wildlife Code, §43.3561 that have escaped from a permitted facility.[;]

[(6) temporarily relocate and hold breeder deer in accordance with the applicable provisions of §65.610 of this title (relating to Transfer of Deer); and]

[(7) temporarily relocate and recapture buck breeder deer under the provisions of Subchapter D of this chapter (relating to Deer Management Permit).]

(c) Unless specifically provided otherwise in this subchapter or the conditions of permit, all permit applications, permit renewals, notifications, reporting, and recordkeeping required by this subchapter shall be submitted electronically via the department's Internet-based deer breeder application.

(d) A deer breeding facility shall contain either white-tailed deer or mule deer, as authorized by the permit.

(e) Except for deer that are not required to be identified and reported to the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L, no deer, livestock, exotic livestock, or similar animals may be present in, confined in, or have access to a deer breeding facility other than the deer listed on the reconciled herd inventory for the facility reported to the department.

§65.603. Application and Permit Issuance.

(a) An applicant for an initial deer breeder's permit shall submit the following to the department:

(1) a completed application on a form supplied by the department;

(2) a letter of endorsement by a person authorized by the department to conduct facility inspections stating that the person [certified wildlife biologist which states that the biologist] has personally conducted an on-siteinspection at [of] the facility identified in the application and affirming [affirms] that[:]

[(A)] the facility identified in the application:

(A) is constructed as depicted on the diagram submitted with the application;

(B) contains infrastructure appropriate for the humane treatment of deer, including for the provision of adequate food, a continuous supply of water, and ample cover or shelter; [(i) physically exists; and]

(C) [(ii)] is adequate for the lawful conduct of activities governed by this subchapter; [and]

(D) [(B)] has been secured in such a fashion to prevent ingress to and egress from the facility by any deer, livestock, exotic livestock, or similar animals; and

(E) no deer, livestock, exotic livestock, or similar animals are present or confined within the facility [no deer are present within the facility];

(3) a diagram of the physical layout of the facilitythat clearly defines each distinct enclosure within the facility boundaries and all gates and fences;

(4) the application processing fee specified in Chapter 53, Subchapter A, of this title (relating to Fees); and

(5) any additional information that the department determines is necessary to process the application.

(b) For the purposes of this subchapter, an authorized facility inspector is a person not employed by the department who:

(1) has been awarded a bachelor's degree or higher in wildlife science, wildlife management, or a related educational field;

(2) has not less than three years of post-graduate experience associated with breeder deer within the five years preceding any facility inspection conducted by the person;

(3) has not, according to department records, failed to maintain a reconciled herd, as defined by §65.90(27) of this title (relating to Definitions), within the five years immediately preceding any inspection conducted for purposes of satisfying the requirements of this subchapter; and

(4) has not been finally convicted of or been assessed an administrative penalty for violation of an offense listed in §65.703 of this title (relating to Proscription of Certain Agents and Surrogates).

(c) [(b)] A deer breeder's permit may be issued when:

(1) the application and associated materials have been approved by the department; and

(2) the department has received the fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees).

(d) [(c)] An initial deer breeder's permit shall be a one-year permit valid from the date of issuance until the immediately following July 1. The department may issue a three or five-year deer breeder's permit if the permit holder has met the requirements of subsection (e) [(d)] of this section for the three-year period immediately prior to application for a three or five-year permit renewal. A three-year or five-year deer breeder permit renewal is valid for the three-year or five-year period specified on the permit.

(e) [(d)] Except as provided in subsection (h) [(g)] of this section, a deer breeder's one, three, or five-year permit may be renewed prior to the date of expiration, provided that the applicant:

(1) is in substantial compliance with the provisions of this subchapter and Parks and Wildlife Code, Chapter 43, Subchapters L and X;

(2) has submitted a timely application for renewal or is, as determined by the department, making satisfactory progress towards resolution of deficiencies that prevent timely renewal;

(3) has filed the annual report in a timely fashion, as required by §65.608 of this title (relating to Annual Reports and Records);

(4) has paid the permit renewal fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees); and

(5) for a permit renewal of three-years or five-years, meets the criteria for a three-year and five-year permit specified in Parks and Wildlife Code, §43.352.

(f) [(e)] An authorized agent may be added to or deleted from a permit at any time by notifying the department. No person added to a permit under this subsection shall participate in any activity governed by a permit unless that person is listed on an amended permit issued by the department.

(g) [(f)] Except as provided by this subchapter for [release,] transfer[, or transport] of breeder deer, a deer breeder's permit authorizes the holding of breeder deer only within the physical layout of a facility described by the diagram required by subsection (a)(3) of this section. If a permittee wishes to enlarge, reduce, reconfigure, or otherwise alter [the exterior dimensions of] a facility, [either by enlargement or reconfiguration,] the permittee shall submit to the department an accurate diagram of the altered facility, indicating all changes to the existing facility[, to the department]. It is unlawful to introduce, cause the introduction of, or hold breeder deer anywhere other than within the dimensions of the facility as indicated by an approved [the] diagram on file with the department.

(h) [(g)] In addition to the provisions of Parks and Wildlife Code, Chapter 12, Subchapter G, the department may refuse permit issuance or renewal as provided in Subchapter U of this chapter (relating to Authority to Refuse to Issue or Renew Permit).

(i) [(h)] The department shall conduct all reviews of department decisions to deny issuance or renewal of a permit under this subchapter in compliance with the provisions of Parks and Wildlife Code, Chapter 12, Subchapter G and Subchapter U of this chapter.

§65.604. Disease Monitoring.

The provisions of Subchapter B, Division 2, of this chapter apply to the possession and movement of deer pursuant to a permit issued under this subchapter.

§65.605. Holding Facility Standards and Care of Deer.

(a) The entire perimeter fence of a facility containing breeder deer, including nursing and medical facilities, shall be no less than seven feet in height, and shall be constructed of department-approved net mesh, chain link or welded wire that will retain breeder deer. An indoor facility is acceptable if it meets the standards described in this section and provides permanent access to an outdoor environment that is sufficient for keeping the breeder deer in captivity.

(b) A permittee shall ensure that deer have access to adequate food, a continuous supply of water, and ample cover or shelter.

(c) [(b)] Immediately upon discovering the escape of breeder deer from a facility, a permittee shall notify the department. The notification shall include a detailed description of the permittee's intended actions to recapture the escaped deer, including the methods that will be employed to recapture the deer and the dates and times that recapture will be attempted. The permit holder shall notify the department daily of the efforts to capture the escaped deer until the escaped deer are captured. [The permittee shall have ten days from the date of such report to capture only those breeder deer that are marked in accordance with Parks and Wildlife Code, §43.3561. All recaptured breeder deer must be returned to the facility from which the breeder deer escaped.] If after ten days the permittee is unable to capture escaped breeder deer that have been reported in accordance with this subsection, the deer may not be recaptured or held in a deer breeding facility unless specifically authorized in writing by the department for purposes of disease management [the department may grant an additional five-day period for capture efforts to continue, contingent upon the permittee proving to the department's satisfaction that reasonable efforts were made to effect the capture during the first ten-day period].

(d) If a permit holder is unable to recapture escaped breeder deer reported as provided under subsection (c) of this section and the breeding facility is designated as NMQ at the time of or subsequent to the time of escape under the provisions of Subchapter B, Division 2, of this chapter, the property on which the deer breeding facility is located and any tract of land contiguous to the property under common ownership shall be subject to a department disease-testing plan requiring mandatory CWD testing and reporting.

§65.610. Transfer of Deer.

(a) General [requirement]. No person may possess breeder deer in a trailer or vehicle, or remove or allow removal of breeder deer from a trailer, or accept, introduce, or allow introduction of breeder deer into a permitted facility, [No person may remove deer from or accept breeder deer into a permitted facility] unless a valid transfer permit has been activated as provided in this section.

(b) Transfer by deer breeder. In accordance with the provisions of Subchapter B, Division 2, of this chapter (concerning Chronic Wasting Disease - Movement of Deer), the [The] holder of a valid deer breeder's permit may transfer legally possessed breeder deer to:

[(1) to or from another deer breeder as a result of sale, purchase or other arrangement]

[(2) to or from another deer breeder on a temporary basis for breeding purposes;]

[(3) to or from another person on a temporary basis for nursing purposes;]

[(4) to an individual who purchases or otherwise lawfully obtains the deer for purposes of release but does not possess a deer breeder's permit;]

(1) [(5)] a facility registered with the department for purposes of veterinary treatment; or [to an individual for the purpose of obtaining medical attention, provided the breeder deer do not leave this state;]

[(6) to a facility authorized under Subchapter D of this chapter (relating to Deer Management Permit) to receive buck deer on a temporary basis; or]

(2) [(7)] an [to the holder of a valid] educational display or zoological facility permitted [permit issued] by the department. A transfer under this paragraph is final; breeder deer transferred [donated] to a permitted [the holder of an] educational display or zoological facility [permit] may not be returned to any breeder facility.

(c) White-tailed deer and mule deer may not be transferred to a facility located in a county for which there is no open season for that species.

(d) [(c)] The department will not authorize the transfer of breeder deer to a release site if the department has determined that the transfer will detrimentally affect existing populations or systems.[Transfer by person other than deer breeder. An individual who does not possess a deer breeder's permit may possess deer under a transfer permit if the individual is transporting breeder deer within the state and the breeder deer were legally obtained from a deer breeder.]

(e) [(d)] Release.

[(1) The department may authorize the release of breeder deer for stocking purposes if the department determines that the release of breeder deer will not detrimentally affect existing populations or systems.]

(1) [(2)] Breeder deer lawfully transferred to a registered release site may be held in temporary captivity for any period of time from March 1 through the eleventh day immediately preceding an open deer season to acclimate the breeder deer to habitat conditions at the release site; however, such temporary captivity must be specifically authorized in writing by the department. Not later than 11:59 p.m. on the eleventh day immediately preceding an open deer season, all deer being held in temporary captivity under the provisions of this paragraph shall be released. Release shall consist of the removal of at least 20 feet of the components of a pen that serve to maintain deer in a state of detention within the pen; however, no opening shall be less than 10 feet in width. Such components shall be removed for no fewer than 30 consecutive days.

(2) [(A)] An enclosure used to temporarily detain deer under this paragraph shall be physically separate from any deer breeding facility and the deer being temporarily held shall not be commingled with breeder deer. Deer held in temporary captivity shall not be returned to any deer breeding facility.

(3) [(B)] The department will not authorize the detention of deer under this paragraph during an open hunting season.

(4) [(C)] Deer in temporary captivity under the provisions of this paragraph shall not be hunted while in temporary captivity.

(f) [(e)] Transfer permit.

(1) A transfer permit is valid for 48 consecutive hours from the time of activation.

(2) A transfer permit authorizes the transfer of the breeder deer specifically identified on the transfer permit to one and only one registered facility [receiver].

(3) A transport manifest is a written document that specifically identifies the deer in a means of transport at any given time between departure from the source facility identified on the transfer permit and any destination facility identified on the transfer permit. A person in possession of deer during transport under a transfer permit must physically possess a transport manifest under any of the following conditions:

(A) multiple vehicles are employed to transport deer to only one destination identified in a single transfer permit;

(B) a single vehicle is employed for multiple trips to a single destination identified in a single transport permit; or

(C) a single instance of transport involves stops at multiple destinations.

(4) [(3)] A transfer permit is activated only by:

[(A) notifying the Law Enforcement Communications Center in Austin by phone; or]

(A) [(B)] utilizing the department's online [Internet-based deer breeder] application; or

(B) notifying the Law Enforcement Communications Center in Austin by phone or email in the event the department's online application is offline or otherwise unavailable to the general public.

(C) It is an offense for any person to transport a deer under a transfer permit unless the person also possesses a confirmation number issued by the department indicating receipt of the notification for that instance of transport.

(5) [(4)] No person may possess a live breeder deer at any place other than within a permitted facility unless that person also possesses on their person a department-issued transfer permit legibly indicating, at a minimum:

(A) the species, sex, and unique number of each breeder deer in possession;

(B) the facility identification numbers for the source and destination facilities [, or, if applicable, the specific release location for each breeder deer in possession]; and

(C) the date and time that the permit was activated.

(6) [(5)] Not later than 48 hours following the completion of the movement of breeder deer [all activities] under a transfer permit, the permit shall be completed and submitted to the department.

(7) [(6)] A deer breeder may transport breeder deer without a transfer permit from a permitted facility to a licensed veterinarian's medical facility for emergency medical treatment, [veterinarian] provided:

(A) the transport occurs by the most feasible direct route;

(B) the breeder deer are not removed from the means of transportation at any point from the time of departure from the source facility to the time of return to the source facility, including at the place of treatment [between the permitted facility and the veterinary facility]; and

(C) the breeder deer do not leave this state.

(D) If a breeder deer is removed from the means of transportation to the medical facility and is temporarily housed in

a location that may house other susceptible species, then a transfer permit reflecting that transport must be activated and completed and an additional transfer permit must be activated prior to the deer returning to the deer breeding facility.

(E) An eligible-age deer that is transported to a veterinary medical facility under the provisions of this section and dies at any time before being returned to a breeding facility is an eligible mortality for the purposes of the requirements of Subchapter B of this chapter.

(g) [~~(f)~~] Marking of vehicles and trailers. No person may possess, transport, or cause the transportation of breeder deer in a trailer or vehicle under the provisions of this subchapter unless the trailer or vehicle exhibits an applicable inscription, as specified in this subsection, on the rear surface of the trailer or vehicle. The inscription shall read from left to right and shall be plainly visible at all times while possessing or transporting breeder deer upon a public roadway. The inscription shall be attached to or painted on the trailer or vehicle in block, capital letters, each of which shall be of no less than six inches in height and three inches in width, in a color that contrasts with the color of the trailer or vehicle. If the person is not a deer breeder, the inscription shall be "TXD". If the person is a deer breeder, the inscription shall be the deer breeder serial number issued to the person.

§65.611. Prohibited Acts.

(a) Deer obtained from the wild under the authority of a permit or letter of authority issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, or R shall not be commingled with deer held in a permitted deer breeding facility.

(b) A person commits an offense if that person places or holds breeder deer in captivity at any place or in any facility for which the herd inventory on file with the department does not account for those breeder deer, except for fawn breeder deer that are not yet required to be reported to the department [~~on any property other than property for which a deer breeder's permit, or a permit authorized under other provisions of this title or Parks and Wildlife Code, is issued, except that a permittee may transport and temporarily hold breeder deer at another location for breeding, nursing, or veterinary purposes as provided in this subchapter~~].

(c) No breeder deer shall be held in a trailer or other vehicle of any type except for the purpose of immediate transportation from one location to another.

(d) No person may possess a breeder deer in a nursing facility beyond 120 days following the deer's birth.

(e) No person may hold more than one cervid species at any time in a deer breeding facility, or cause or allow the interbreeding by any means of white-tailed deer and mule deer.

(f) [~~(d)~~] Possession of a deer breeder's permit is not a defense to prosecution under any statute prohibiting abuse of animals.

(g) [~~(e)~~] No deer breeder shall exceed the number of breeder deer allowable for the permitted facility, as specified by the department on the deer breeder's permit.

(h) [~~(f)~~] This subsection does not apply to breeder deer lawfully obtained prior to June 21, 2005. Except as provided in this subsection, no person may:

(1) possess a deer acquired from an out-of-state source; or

(2) import or attempt to import deer from an out-of-state source.

(i) It is an offense for any person the department has authorized as a facility inspector to submit the checklist or letter of endorsement required by §65.603(a)(2) of this title (relating to Application and Permit Issuance) if the person has not personally conducted an onsite inspection at the facility.

(j) It is an offense for any person to violate or fail to comply with the provisions a disease-testing plan created under the provisions of §65.605(d) of this subsection.

(k) No person may clone or authorize or participate in the cloning of a white-tailed deer or mule deer unless specifically authorized to do so by a permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter C. For the purposes of this subsection, cloning is the creation or attempted creation of a white-tailed or mule deer from a single progenitor cell.

(l) No person may possess deer, livestock, exotic livestock, or similar animals in a deer breeding facility, or allow deer, livestock, exotic livestock, or similar animals to access a deer breeding facility other than:

(1) the deer identified in the reconciled herd inventory for the facility; and

(2) offspring that are not required to be identified and reported to the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.612. Disposition of Deer.

(a) Upon termination, suspension, or revocation of a deer breeder's permit, the permittee shall dispose of all breeder deer covered by the permit.

(b) Breeder deer may be disposed of by:

(1) transfer [~~sale or donation~~] to another deer breeder;

(2) transfer [~~sale or donation~~] to a holder of a zoological permit issued by the department;

(3) transfer [~~sale or donation~~] to the holder of an educational display permit issued by the department; or

(4) transfer to registered release sites [~~release to the wild~~] as specifically authorized by the department.

(c) Breeder deer still in possession 30 days following termination, revocation, or suspension of a permit shall be disposed of at the discretion of the department.

(d) Disposition of all breeder deer shall be at the expense of the permittee.

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 September 21, 2020.

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Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: November 1, 2020
For further information, please call: (512) 389-4775

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31 TAC §65.604

The repeal is proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, pur-

chase, and sale of breeder deer held under the authority of the subchapter; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed repeal affects Parks and Wildlife Code, Chapter 43, Subchapter E, and Chapter 61.

§65.604. Disease Monitoring.

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

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Colette Barron-Bradsby
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Texas Parks and Wildlife Department
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.208

The Texas Forensic Science Commission ("Commission") proposes an amendment to 37 Texas Administrative Code §651.208 which describes the requirements for renewal of a forensic analyst or technician license. The amendment establishes a timeline for requiring 8 discipline-specific continuing forensic education ("CFE") hours for forensic analysts adding another discipline to the scope of their forensic analyst license. Under the current rule, forensic analysts adding a discipline are required to complete 8 hours of CFE specific to the supplemental discipline before their license expires, without regard to the date they add the extra discipline to their license. The rule amendment requires 1) no CFE specific to the supplemental discipline for analysts adding a supplemental discipline within 6 months of their current license expiration; 2) 4 hours of CFE specific to the supplemental discipline for analysts adding a discipline between 6 and 18 months of license expiration; and 3) the full 8 hours for analysts adding a discipline 18 or more months before license expiration. The amendment is necessary to reflect adoptions made by the Commission at its July 24, 2020 quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure Article 38.01.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendment is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal. The amendment does not expand any forensic analyst licensing requirement under the current program, but rather requires less discipline-specific CFE hours for analysts adding a discipline depending on how close the analyst is to their license expiration date when they add the discipline.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendment does not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be the establishment of a timeline that considers the amount of time an analyst has remaining in their license cycle to fulfill the CFE required for the new discipline. Establishing this timeline removes a potential barrier for forensic analysts interested in adding a discipline to their license. There are no anticipated economic costs to persons required to comply with the proposed rule.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f). Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendment will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or laboratory who is required to comply with the rule as proposed.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code §2001.221(b), 1) the proposed rule does not create or eliminate a government program; 2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; 4) the proposed rule does not require an increase or decrease in fees paid to the agency; 5) the proposed rule does not create a new regulation; 6) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and 7) the proposed rule has a neutral effect on the state's economy.

The amendment does not expand any forensic analyst licensing requirement under the current program, but rather requires less discipline-specific CFE hours for analysts adding a discipline depending on how close the analyst is to their license expiration date.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by November 2, 2020, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a(d), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license, including the successful complete of educational requirements established by the Commission.

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.208.

§651.208. Forensic Analyst and Forensic Technician License Renewal.

(a) Renewal. The Commission may renew an individual's Forensic Analyst or Forensic Technician License up to 90 days before [~~to~~] the expiration of the individual's two-year license term.

(b) Expiration. A Forensic Analyst or Forensic Technician License or renewed Forensic Analyst or Forensic Technician License expires two years from the date the initial application was granted.

(c) Effective date. A renewed Forensic Analyst or Forensic Technician License takes effect on the date the licensee's previous license expires.

(d) Application. An applicant for a Forensic Analyst or Forensic Technician License renewal shall complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Renewal Application provided by the Commission, pay the required fee, attach documentation of fulfillment of Continuing Forensic Education requirements set forth in this section, provide an updated copy of the Commission's Proficiency Testing Certification form signed by the licensee's authorized laboratory representative, and complete the mandatory online legal and professional responsibility update described in this section.

(e) Continuing Forensic Education Including Mandatory Legal and Professional Responsibility Update:

(1) Forensic Analyst and Forensic Technician Licensees must complete a Commission-sponsored mandatory legal and professional responsibility update by the expiration of each two-year license cycle as provided by the Commission. Forensic Technicians are not required to complete any other continuing forensic education requirements listed in this section.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

(3) All forensic analysts shall be required to satisfy the following Continuing Forensic Education Requirements:

(A) Completion of twenty-four (24) continuing forensic education hours per two-year [~~2-year~~] license cycle.

(B) Sixteen (16) hours of the twenty-four (24) must be discipline-specific training, peer-reviewed journal articles, and/or conference education hours; if a licensee is licensed in multiple forensic disciplines, at least eight (8) [~~8~~] hours of discipline-specific training in each forensic discipline are required subject to the provisions set forth in subsection (f) of this section.

(C) The remaining eight (8) hours may be general forensic training, peer-reviewed journal articles, and/or conference education hours that include hours credited for the mandatory legal and professional responsibility training.

(4) Continuing forensic education programs will be offered and/or designated by the Commission and will consist of independent, online trainings, readings, and participation in recognized state, regional, and national forensic conferences and workshops.

(5) Approved continuing forensic education hours are applied for credit on the date the program and/or training is delivered.

(f) Timeline for Exemption from Supplemental Continuing Forensic Education Requirements. Where a current licensee adds a forensic discipline to the scope of his or her license, the following continuing forensic education requirements apply for the supplemental forensic discipline:

(1) If the supplemental forensic discipline is added less than six (6) months prior to the expiration of the analyst's current license, no additional discipline-specific training is required for the supplemental forensic discipline.

(2) If the supplemental forensic discipline is added six (6) months or more but less than eighteen (18) months prior to the expiration of the analyst's current license, four (4) additional discipline-specific training hours are required for the supplemental forensic discipline.

(3) If the supplemental forensic discipline is added eighteen (18) months or more prior to the expiration of the analyst's current license, eight (8) additional discipline-specific training hours are required for the supplemental forensic discipline.

(g) [~~(f)~~] If an applicant fails to fulfill any or all of the requirements pertaining to license renewal, continuing forensic education and the mandatory legal and professional responsibility update, the applicant may apply to the Commission for special dispensation on a form to be provided on the Commission's website. Upon approval by the Commission, the applicant may be allowed an extension of time to fulfill remaining continuing forensic education requirements.

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

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Leigh Marie Savage
Associate General Counsel
Texas Forensic Science Commission
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For further information, please call: (512) 784-0037

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 802, relating to the Integrity of the Texas Workforce System:

Subchapter I. Workforce Awards, §§802.161 - 802.163 and §802.165

TWC proposes the repeal of the following sections of Chapter 802, relating to the Integrity of the Texas Workforce System:

Subchapter I. Workforce Awards, §802.164 and §§802.166 - 802.169

TWC proposes the following new section to Chapter 802, relating to the Integrity of the Texas Workforce System:

The purpose of the proposed Chapter 802 rule change is to amend Subchapter I.

Subchapter I describes the process through which TWC's three-member Commission (Commission) may establish monetary and nonmonetary awards to encourage, recognize, and reward the innovative efforts and exceptional performance of Local Workforce Development Boards (Boards) and Adult Education and Literacy (AEL) grant recipients in serving Texas workforce system customers.

The rules in Chapter 802, Subchapter I have been in place since February 2011. The services administered by TWC have since expanded, and federal regulations authorizing many of TWC's programs have changed. Chapter 802 rule amendments were last adopted in February 2014 to address the transfer of the AEL program in 2013 and included provisions related to incentive awards. Additionally, in 2014, the president signed into law the Workforce Innovation and Opportunity Act (WIOA), which repealed and replaced the Workforce Investment Act of 1998 (WIA). WIA required that states provide incentive grants to Boards as a required statewide activity. WIOA changed the classification of incentive grants from a required statewide activity to an allowable statewide activity. Finally, in 2016, the legislature dissolved the Texas Department of Assistive and Rehabilitative Services and transferred its workforce-related programs to TWC, thus creating TWC's Vocational Rehabilitation Division.

Those changes are just a few examples of how the Texas workforce system has evolved into a more robust, integrated, and dynamic network comprising many partners, including Boards, AEL grant recipients, community colleges, and employers. The awards process has also evolved and must remain flexible to ensure its relevance in encouraging, recognizing, and rewarding workforce system partners for exceeding expectations and creating innovations in a dynamic and ever-changing environment.

Subchapter I, "Incentive Awards" is renamed "Workforce Awards" to more accurately describe the amended subchapter's broader scope of recognizing Boards, AEL grant recipients, and other workforce system partners for their innovative contributions in exceeding workforce service-delivery goals and objectives.

Subchapter I is also amended to clarify that the Commission has the authority to issue any award in accordance with the award's programmatic and funding-source requirements.

Additionally, Subchapter I is amended to specify that funding for any monetary award must comply with the requirements associated with the award's funding authority.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER I. WORKFORCE AWARDS

TWC proposes the following amendments to Subchapter I:

§802.161. Scope and Purpose

Section 802.161 is amended to reflect the current and broader purpose and scope of the workforce awards.

§802.162. Definitions

Section 802.162 is amended to remove definitions no longer relevant under WIOA, add definitions for "Workforce Awards" and "Workforce System Partner," and clarify remaining definitions.

§802.163. Types of Workforce Awards

Section 802.163 is retitled "Types of Workforce Awards" and amended to prescribe the Commission's authority to determine which awards will be issued; what, if any, monetary amounts will be offered for awards; and whether an award's criteria will be based on performance data, application, nomination, any combination thereof, or another manner. The amended language also gives the Commission flexibility to modify or remove an award at any time. Amended §802.163 incorporates relevant information pertaining to performance awards from repealed §802.166, Performance Awards.

§802.164. Data Collection

Section 802.164 is repealed because the section is no longer relevant to the workforce awards process.

§802.165. Workforce Awards Recipient Classification

Section 802.165 is amended to remove language exclusive to Boards and add language to incorporate other workforce system partners for potential awards eligibility.

§802.166. Performance Awards

Section 802.166 is repealed because it contains provisions that were required under WIA that are not required under WIOA. Information pertaining to performance awards is now addressed under amended §802.163.

§802.166. Notification

New §802.166 requires TWC to provide notification to Boards, AEL grantees, and other workforce system partners, as applicable, pertaining to the annual workforce awards and sets forth a deadline for providing the notification.

§802.167. Workforce Investment Act Local Incentive Awards

Section 802.167 is repealed because WIA and its provisions requiring states to provide incentive grants have been repealed. WIOA, which replaced WIA, does not include the incentive grants requirement.

§802.167. Extraordinary Circumstances

New §802.167 sets forth the Commission's authority to modify eligibility for and assignment of awards under extraordinary circumstances as defined in Chapter 802, Subchapter I.

§802.168. Job Placement Incentive Awards

Section 802.168 is repealed because amended §802.163 provides the Commission with the authority to determine types of awards so rules for specific awards are no longer necessary.

§802.169. AEL Incentive Awards

Section 802.169 is repealed because AEL awards no longer require a separate distinction because amended §802.163 provides the Commission with the authority to designate types of awards so rules for specific awards are no longer necessary.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner, as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend Chapter 802, Subchapter I.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the amendments will be in effect:

--the amendments will not create or eliminate a government program;

--implementation of the amendments will not require the creation or elimination of employee positions;

--implementation of the amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the amendments will not require an increase or decrease in fees paid to TWC;

--the amendments will not create a new regulation;

--the amendments will not expand, limit, or eliminate an existing regulation;

--the amendments will not change the number of individuals subject to the rules; and

--the amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as these rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market and Career Information, has determined that there is no impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to provide updated and clearly specified rules for administering the issuance of workforce awards.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on March 17, 2020. TWC also conducted a conference call with Board executive directors and Board staff on March 27, 2020, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us. Comments must be received no

later than 30 days from the date that this proposal is published in the *Texas Register.*

SUBCHAPTER I. WORKFORCE [~~INCENTIVE~~] AWARDS

40 TAC §§802.161 - 802.163

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules implement those provisions within WIOA for permissible statewide activities, including, but not limited to, WIOA, §§128, 129, 133, and 134.

§802.161. Scope and Purpose.

The purpose of the workforce awards is to allow the Agency's three-member Commission (Commission) to establish monetary and non-monetary awards to encourage innovation and to recognize and reward Local Workforce Development Boards (Boards), Adult Education and Literacy (AEL) grant recipients, and other Texas workforce system partners for exceptional performance in carrying out the workforce system's obligation to help Texas employers, employees, job seekers, and students succeed economically. [~~The purpose of incentive awards is to reward Boards or AEL grant recipients that meet or exceed the performance benchmarks identified in each incentive award and accomplish the Commission's goals to fulfill the workforce needs of employers and to put Texans to work. The Board and AEL grant recipient are responsible for providing strategic and operational planning for its workforce area. The development of an integrated and coherent workforce development system at the local level is the primary focus of Boards. Thus, this policy seeks to recognize Boards or AEL grant recipients for achieving high performance as a system, as well as high performance on behalf of employers and the populations annually targeted by the Commission during the budget process. Incentives will emphasize accountability, high performance, and continuous improvement and support the state in achieving workforce development goals.~~]

§802.162. Definitions.

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

(1) Allocation of Funds--The total yearly funds initially identified for allocation to a local development workforce area (workforce area) [~~(workforce area)~~] for all programs. This does not include consideration of adjustments in funding that the Commission made to [~~a~~] specific programs [~~program(s) by the Commission~~] for the purposes of reallocating or redistributing those funds. This may include new allocations or distributions [~~made during a year~~] that result from changes in law or new funding made available to the workforce areas during [~~a~~] the year.

(2) Classification--A grouping [~~Grouping~~] of Boards, [~~or~~] AEL grant recipients, or other workforce system partners with one or more common characteristics (for example [~~e.g.~~], size) for the purpose of evaluating performance and issuing incentive, quality-improvement, or other [~~giving~~] awards, as determined by the Commission.

(3) Extraordinary Circumstances--Conditions that may have an impact on the determination of which Boards, [~~or~~] AEL grant recipients, or other workforce system partners may receive, or be excluded from receiving, workforce [~~incentive~~] awards, which may include, but are not limited to, matters such as serious unforeseen events, unresolved audit or monitoring findings, sanctions, unanticipated changes in economic conditions, disasters [~~the occurrence of a disaster~~], [~~or~~] legislative changes, or other occurrences directly impacting [~~having a direct impact on~~] the Commission, Boards, [~~or~~] AEL grant recipients, or the Texas workforce system.

(4) Workforce Awards--Awards presented by the Commission to workforce system partners within the parameters of this subchapter to support activities allowable under programmatic funding sources.

[~~(4) Local Coordination--Boards fostering leadership and cooperation to achieve the most effective customer service results for their employers and residents through one or more of the following:~~]

[~~(A) Memoranda of Understanding with required partners that achieve active implementation and integration of related services;~~]

[~~(B) Memoranda of Understanding with partners required by WIA §121(b)(1) but not required by §801.27(b) of this title that include active implementation and integration of related services;~~]

[~~(C) ongoing and regular communication and training on the best practices and benchmarks in building systems or delivering services; or~~]

[~~(D) demonstrating local coordination through other means as determined by the Commission, such as by demonstrating coordination with demonstration grants, youth opportunity grants, self-sufficiency grants, and skills development grants.~~]

(5) Workforce System Partner--For the purposes of workforce awards, any entity that provides workforce services to workforce system customers.

[~~(5) Regional Cooperation--Boards working together as a cooperative unit in a region to provide excellence in customer service through one or more of the following:~~]

[~~(A) submitting joint plans or agreements;~~]

[~~(B) engaging in ongoing and regular communication regarding the best practices and working together to implement those practices by sharing ideas, data, staff, and other resources;~~]

[~~(C) providing opportunities for joint training, conferences, and staff interaction; or~~]

[~~(D) demonstrating regional cooperation through other means as determined by the Commission.~~]

[~~(6) Workforce development programs--Job training, employment, and employment-related educational programs and functions as listed in Texas Labor Code §302.021.~~]

§802.163. Types of Workforce Awards.

The Commission shall determine:

(1) awards to be issued, including award categories and names;

(2) monetary amounts, if any, for each award in accordance with the funding source's allowability for such purposes;

(3) the number of awards to be presented for each category;

(4) the basis for award criteria, such as performance data, an application, a nomination, any combination thereof, or any other criteria;

(5) the classification, if any, of workforce system award recipients for comparison purposes;

(6) the method by which each award will be evaluated; and

(7) other criteria as determined by the Commission. [~~The following are the two types of incentive awards:~~]

[(1) Nonmonetary awards, which may be awarded annually based on high- performance achievement and/or continuous improvement in meeting performance measures and may include plaques, certificates of achievement, or other formalized recognition accolades.]

[(2) Monetary awards, which include:]

[(A) performance awards issued under §802.166 of this subchapter;]

[(B) WIA local incentive awards issued under §802.167 of this subchapter;]

[(C) job placement incentive awards issued under §802.168 of this subchapter; and]

[(D) other awards designated by the Commission.]

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

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Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
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For further information, please call: (512) 689-9855

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SUBCHAPTER I. INCENTIVE AWARDS

40 TAC §802.164

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeal implements those provisions within WIOA for permissible statewide activities, including, but not limited to, WIOA, §§128, 129, 133, and 134.

§802.164. Data Collection.

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

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SUBCHAPTER I. WORKFORCE [INCENTIVE] AWARDS

40 TAC §802.165, §802.166

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules implement those provisions within WIOA for permissible statewide activities, including, but not limited to, WIOA, §§128, 129, 133, and 134.

§802.165. Workforce Award Recipient [Board] Classification.

(a) The Commission may group workforce system partners, including, but not limited to, Boards and AEL grant recipients, in classifications for comparison purposes such to determine workforce award recipients [such as for awarding incentives].

(b) In classifying potential workforce award recipients, [Boards,] the Commission may group potential award recipients [Boards] based on similarities or differences among the potential award recipients [Boards] relating to:

(1) allocations of funds;

(2) prior performance; [or]

(3) demographic, economic, or other characteristics of the individual workforce areas or service-delivery areas;

(4) size; or

(5) other characteristics as determined by the Commission.

§802.166. Notification.

(a) The Agency shall notify Boards, AEL grant recipients, and other workforce system partners, as applicable, of the current year's awards classifications, criteria, deadlines, and methods by which awards information may be submitted to the Agency for consideration.

(b) The notice required under this section shall be provided by the end of the calendar year preceding the presentation of awards.

(c) The Commission may add, modify, or remove an award or award type after the notification deadline when necessary due to extraordinary circumstances. Where the Commission takes such action, the Agency shall promptly notify Boards, AEL grant recipients, and other workforce system partners, as applicable, of the action taken and any changes to the previously noticed awards.

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

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SUBCHAPTER I. INCENTIVE AWARDS

40 TAC §802.166

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeal implements those provisions within WIOA for permissible statewide activities, including, but not limited to, WIOA, §§128, 129, 133, and 134.

§802.166. Performance Awards.

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

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SUBCHAPTER I. WORKFORCE [~~INCENTIVE~~] AWARDS

40 TAC §802.167

The new rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rule implements those provisions within WIOA for permissible statewide activities, including, but not limited to, WIOA, §§128, 129, 133, and 134.

§802.167. Extraordinary Circumstances.

Under extraordinary circumstances, as defined in this subchapter, the Commission may modify eligibility for and assignment of awards as necessary based on factors that the Commission identifies.

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

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Dawn Cronin
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Texas Workforce Commission
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For further information, please call: (512) 689-9855

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SUBCHAPTER I. INCENTIVE AWARDS

40 TAC §§802.167 - 802.169

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeals implement those provisions within WIOA for permissible statewide activities, including, but not limited to, WIOA, §§128, 129, 133, and 134.

§802.167. Workforce Investment Act Local Incentive Awards.

§802.168. Job Placement Incentive Awards.

§802.169. AEL Incentive Awards.

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

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Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
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For further information, please call: (512) 689-9855

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CHAPTER 838. TEXAS INDUSTRY-RECOGNIZED APPRENTICESHIP PROGRAMS

The Texas Workforce Commission (TWC) proposes new Chapter 838, relating to the Texas Industry-Recognized Apprenticeship Programs Grant Program (IRAPGP), comprising the following subchapters:

Subchapter A. General Purpose and Definitions, §838.1 and §838.2

Subchapter B. Grant Program, §§838.11 - 838.14

Subchapter C. Program Administration, §§838.21 - 838.24

Subchapter D. Compliance, §838.31

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

House Bill (HB) 2784, enacted by the 86th Texas Legislature, Regular Session (2019), amended Chapter 302 of the Texas Labor Code by adding Subchapter I, creating the Texas IRAPGP to address Texas' immediate industrial workforce needs resulting from the impact of hurricanes, other natural disasters, and overall workforce shortages.

HB 2784 allows TWC to:

--establish and administer the IRAPGP to encourage the private sector to develop specialized industry-recognized apprenticeship programs in Texas;

--develop and adopt rules to administer and enforce the IRAPGP requirements;

--establish eligibility criteria for grantee recipients;

--award grants only to reimburse an eligible apprentice for the cost of training IRAP participants;

--establish guidelines or formulas for determining an increase in economic value to the state attributable to a participant's program completion; and

--establish limitations on the total amount of grant funds that a grant recipient may be awarded.

Additionally, HB 2784 allows TWC's three-member Commission (Commission) to implement provisions by using other appropriations available if the legislature does not appropriate money specifically for this purpose.

The purpose of the proposed Chapter 838 rules is to implement the provisions of HB 2784, relating to IRAPGP, which is to address Texas' immediate industrial workforce needs resulting from the impact of hurricanes, other natural disasters, and overall workforce shortages.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS

TWC proposes new Subchapter A, General Purpose and Definitions, as follows:

§838.1. Scope and Purpose

New §838.1(a) and (b) set forth the provisions related to the scope and purpose of the IRAP fund to implement the provisions of HB 2784, relating to IRAPGP, which is to address Texas' immediate industrial workforce needs resulting from the impact of hurricanes, other natural disasters, and overall workforce shortages. New §838.1(a) also states that Chapter 838 may be referred to as the IRAP fund rules.

§838.2. Definitions

New §838.2 sets forth the definitions of the IRAP fund rules.

New §838.2(1) defines "grant recipient" as an eligible grant recipient within Texas that is awarded industry-recognized apprenticeship funds by TWC. The grant recipient also must comply with all contract requirements and TWC monitoring activities as required by Chapter 802, Subchapter D, Agency Monitoring Activities.

New §838.2(2) defines "eligible grant recipient" as an entity that is eligible to receive IRAP funding. Eligible grant recipients include the following: trade and industry groups, corporations, nonprofit organizations, educational institutions, unions, and joint labor-management organizations.

New §838.2(3) defines "Industry-Recognized Apprenticeship Program" as a training program that provides on-the-job training, preparatory instruction, supplementary instruction, or related instruction in an occupation that has been recognized as an apprenticeable occupation by the US Department of Labor (DOL) or that is certified as an IRAP by a third-party certifier that has received a DOL favorable determination of qualification to award that certification.

New §838.2(4) defines "participant" as an individual training in an IRAP under an apprenticeship agreement who is a full-time paid worker receiving benefits and employed in the private sector during training, maintains suitable employment for at least 12 consecutive months immediately following completion of the training program, and receives related instructional training to learn a skill in a certified apprenticeable occupation that advances his or her skills to a credentialed, performance-verified, mid-level status in the occupation, as identified by TWC.

New §838.2(5) defines "Standards Recognition Entity (third-party certifier)" as an entity that is qualified to recognize an apprenticeship program as an IRAP and that is recognized by DOL.

SUBCHAPTER B. GRANT PROGRAM

TWC proposes new Subchapter B, Grant Program, as follows:

§838.11. General Statement of Purpose

New §838.11 states that Texas Labor Code, §302.255, provides TWC with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4.

§838.12. Notice of Grant Availability and Application

New §838.12 states the manner in which TWC announces the availability of funds by posting public notice in the Texas Register and on the TWC website in order to reach the broadest audience. New §838.12 also details the submission process and authority to request additional information to effectively evaluate applications.

§838.13. Eligible Applicants

New §838.13(a) defines IRAPs as the entities eligible to apply for IRAP funding.

New §838.13(b) establishes the requirements for IRAPS to:

(1) act as the fiscal agents for the funds and comply with annual report procedures in Texas Labor Code, §302.258;

(2) apply to TWC in the form and manner prescribed;

(3) be in good standing under the laws of the state, as evidenced by a certificate issued by the secretary of state;

(4) not owe delinquent taxes to a taxing unit of Texas; and

(5) operate a certified IRAP that:

(A) provides on-the-job training under an industry-recognized, accredited training curriculum;

(B) guarantees employment to participants during and upon successful completion of the training period;

(C) pays each participant a progressive wage and provides eligibility to receive full-time employee benefits during and upon successful completion of the training period, equal to or above the impacted local workforce development area's (workforce area's) self-sufficiency wage;

(D) requires participants to advance their skills, at a minimum, to a credentialed, performance-verified mid-level status in a field related to the IRAP;

(E) is no longer than 26 weeks; and

(F) gives preference to training and hiring unemployed Texans who have filed for benefits, veterans, formerly incarcerated individuals, and underemployed individuals who are working without industry-recognized certifications or other credentials.

§838.14. Funding Qualifications for Industry-Recognized Apprenticeship Programs

New §838.14 sets forth the funding qualifications for IRAPs, as meeting the requirements listed in §838.13, meeting the definition prescribed in §838.2(3), providing TWC with a validated copy of its written training plan or recognition certificate as approved by the third-party certifier, and complying with TWC rules and Texas Labor Code, Chapter 302.

SUBCHAPTER C. PROGRAM ADMINISTRATION

TWC proposes new Subchapter C, Program Administration, as follows:

§838.21. Grants for Industry-Recognized Apprenticeship Programs

New §838.21(a) sets forth the conditions for which IRAP funds may be used to reimburse an eligible grant recipient for costs incurred while training a participant, allows IRAP funds to be awarded on an IRAP-participant basis, and establishes per-participant funding caps.

New §838.21(b) allows TWC to consider other factors when awarding a grant, including anticipated economic value to the state upon participants' program completion, increased tax revenue generated by participants' wages, and the decrease in participants' use of state-funded benefits, attributable to the participants' job placement and earning projections.

TWC, while maintaining efficient statewide distribution for the program's resources, is committed to timely service of these immediate-need areas. Considerations of other factors allow the director of the fund to emphasize service to areas with immediate needs resulting from natural disasters and overall workforce shortages. Applications for grant money available to a workforce area with a high workforce shortage would be processed on a priority basis.

Expedited processing will encourage grant applications from eligible impacted areas. Applications can be expected to arrive earlier in the fiscal year and in greater quantity. This expedited process will help ensure that the IRAP fund is helping workers in eligible impacted areas as quickly as possible and help ensure the most effective use of dollars available to eligible impacted areas.

§838.22. Program Objectives

New §838.22 sets forth the program objectives for administering the IRAP fund:

--to ensure that funds from the program are spent in workforce areas that are impacted by

hurricanes and other natural disasters and to respond to immediate workforce needs and overall workforce shortages;

--to encourage the private sector to develop specialized IRAPs in Texas;

--to develop projects that, at completion of the training, will result in wages equal to or greater than the mid-level status of the apprenticeable occupation related to that IRAP; and

--to sponsor the attraction of advancing participant skills, at a minimum, to obtaining an industry credential in the related field of the IRAP.

TWC, while maintaining efficient statewide distribution of the IRAP fund's resources, is committed to timely service of high-need areas. The purpose of these objectives is to fund programs that, at completion of the training, will result in the greatest economic benefit to the public for each dollar invested in worker training in the form of enhanced worker skills and optimized multiplier effects within the local community, furthering the promotion of higher wages.

§838.23. Administrative Costs Limitation

New §838.23 establishes an administrative cap on IRAP funds not to exceed 10 percent of the total grant award.

§838.24. Performance

New §838.24 authorizes TWC to develop and adopt annual performance measures and targets for IRAPs and consider past performance of IRAPs in determining eligibility for funding.

TWC strives to be a diligent and responsible steward of public funds, with a commitment to transparency and accountability. Measuring program performance allows TWC to evaluate the effectiveness of programs and make data-driven decisions.

SUBCHAPTER D. COMPLIANCE

TWC proposes new Subchapter D, Compliance, as follows:

§838.31. Funds Management and Accountability

New §838.31 requires IRAPs to comply with the applicable rules in Chapter 802, Integrity of the Texas Workforce System, specifically:

--Subchapter D, relating to Agency Monitoring Activities;

--Subchapter F, relating to Performance and Accountability;

--Subchapter G, relating to Corrective Actions; and

--Subchapter H, relating to Remedies.

Section 802.2(1) defines "Agency Grantees" as "Grantees that receive funding from the Agency, such as Skills Development Fund, Wagner-Peyser 7(b), and [Workforce Innovation and Opportunity Act (WIOA)] to provide workforce services." IRAPs meet this definition and thus are considered TWC grantees; as such, they must adhere to the applicable requirements set forth in Chapter 802.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental

action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement the provisions of HB 2784 relating to IRAPGP, which is to address Texas' immediate industrial workforce needs resulting from the impact of hurricanes, other natural disasters, and overall workforce shortages.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

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

--the new rules will not create or eliminate a government program;

--implementation of the new rules will not require the creation or elimination of employee positions;

--implementation of the new rules will not require an increase or decrease in future legislative appropriations to TWC;

--the new rules will not require an increase or decrease in fees paid to TWC;

--the new rules will not create a new regulation;

--the new rules will not expand, limit, or eliminate an existing regulation;

--the new rules will not change the number of individuals subject to the new rules; and

--the new rules will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to implement the provisions of HB 2784 relating to IRAPGP, which is to address Texas' immediate industrial workforce needs resulting from the impact of hurricanes, other natural disasters, and overall workforce shortages.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding these new rules to the Boards for consideration and review on June 23, 2020. TWC also conducted a conference call with Board executive directors and Board staff on June 26, 2020, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the Texas Register.

SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS

40 TAC §838.1, §838.2

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§838.1. Scope and Purpose.

(a) Purpose. The purpose of this chapter is to implement the provisions of Texas Labor Code, Chapter 302, related to the Texas Industry-Recognized Apprenticeship Programs Grant Program. These rules may be cited as the industry-recognized apprenticeship program (IRAP) fund rules.

(b) Goal. The goal of the IRAP fund is to address Texas' immediate industrial workforce needs resulting from the impact of hurricanes, other natural disasters, and overall workforce shortages.

§838.2. Definitions.

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

(1) Grant Recipient--An eligible grant recipient within Texas that is awarded industry-recognized apprenticeship funds by the Agency. Grant recipients must cooperate and comply with all contract requirements and Agency monitoring activities, as required by Chapter 802, Subchapter D of this title (relating to Agency Monitoring Activities).

(2) Eligible Grant Recipient--An entity, as specified in state and federal law, that is eligible to receive IRAP funding. Eligible grant recipients include, but are not limited to, the following:

(A) Trade and industry groups

(B) Corporations

(C) Nonprofit organizations

(D) Educational institutions

(E) Unions

(F) Joint labor-management organizations

(3) Industry-Recognized Apprenticeship Program--A training program that:

(A) provides on-the-job training, preparatory instruction, supplementary instruction, or related instruction in an occupation that has been recognized as an apprenticeable occupation by the US Department of Labor (DOL); or

(B) is certified as an IRAP by a third-party certifier that has received a DOL favorable determination of qualification to award that certification.

(4) Participant--An individual training in an IRAP under an apprenticeship agreement who:

(A) is a full-time paid worker, receiving benefits and employed in the private sector during training;

(B) maintains suitable employment for at least 12 consecutive months immediately following completion of the training program; and

(C) receives related instructional training to learn a skill in a certified apprenticeable occupation that advances his or her skills to a credentialed, performance-verified mid-level status in the occupation, as identified by the Agency.

(5) Standards Recognition Entity (third-party certifier)--An entity that is qualified to recognize an apprenticeship program as an IRAP and that is recognized by DOL.

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

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Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
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For further information, please call: (512) 689-9855

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SUBCHAPTER B. GRANT PROGRAM

40 TAC §§838.11 - 838.14

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§838.11. General Statement of Purpose.

In accordance with Texas Labor Code, Chapter 302, the Agency establishes the IRAP Grant Program, which shall be administered pursuant to Texas Labor Code, Chapter 302, and the rules in this chapter to award grants from the IRAP fund to encourage the private sector to develop specialized IRAPs in Texas that meet the requirements of Texas Labor Code, §302.255.

§838.12. Notice of Grant Availability and Application.

(a) From time to time, the Agency may publish a Notice of Availability (NOA) of grant funds under this chapter. The notice shall be published in the *Texas Register* and on the Agency's website. In addition to the respective purpose for each grant program under this chapter, the notice may include:

(1) the total amount of grant funds available for the award;

(2) the geographical local workforce development areas (workforce areas) eligible;

(3) the specific industries or occupations targeted;

(4) the maximum number of grants to be awarded;

(5) the special populations to be served;

(6) the application process and requirements; and

(7) any other grant requirements necessary and appropriate for awarding grants in addition to those set forth in this chapter.

(b) To be eligible for a grant award, an applicant meeting the eligibility criteria identified in the NOA shall submit an application in the form and manner as prescribed by the Agency in the NOA.

(c) The Agency may request additional information at any time before the grant award in order to effectively evaluate any application.

§838.13. Eligible Applicants.

(a) Eligible grant recipients are the entities eligible to apply to the Agency for IRAP funding.

(b) Approved grant recipients shall:

(1) be the fiscal agents for the funds and are subject to the annual report procedures set forth in Texas Labor Code, §302.258;

(2) apply to the Agency in the form and manner prescribed by the NOA;

(3) be in good standing under the laws of the state, as evidenced by a certificate issued by the secretary of state;

(4) not owe delinquent taxes to a taxing unit of Texas; and

(5) operate a certified IRAP that:

(A) provides on-the-job training under an industry-recognized, accredited training curriculum;

(B) guarantees employment to participants during and upon successful completion of the training period;

(C) pays each participant a progressive wage and provides eligibility for participants to receive full-time employee benefits during and upon successful completion of the training period, equal to or above the impacted workforce area's self-sufficiency wage;

(D) requires participants to advance their skills, at a minimum, to a credentialed, performance-verified mid-level status in a field related to the IRAP;

(E) has a duration of no longer than 26 weeks; and

(F) gives preference to training and hiring:

(i) unemployed Texans who have registered with the Agency;

(ii) veterans of the United States armed forces;

(iii) formerly incarcerated individuals; and

(iv) underemployed individuals who are working without industry-recognized certifications or other credentials.

§838.14. Funding Qualifications for Industry-Recognized Apprenticeship Programs.

(a) To qualify for funding, each IRAP shall meet the requirements listed in §838.13 of this chapter (relating to Eligible Applicants).

(b) The IRAP must meet the definition prescribed in §838.2(3) of this chapter (relating to Definitions).

(c) Each IRAP shall provide the Agency with a validated copy of its written training plan or recognition certificate as approved by the third-party certifier.

(d) A funded IRAP must comply with Agency rules and Texas Labor Code, Chapter 302.

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

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Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
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For further information, please call: (512) 689-9855

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SUBCHAPTER C. PROGRAM ADMINISTRATION

40 TAC §§838.21 - 838.24

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§838.21. Grants for Industry-Recognized Apprenticeship Programs.

(a) Grants received under this subchapter may be used to:

(1) reimburse an eligible grant recipient for costs incurred while training a participant who:

(A) completes a program operated by the grant recipient and achieves the required skill level set forth in Texas Labor Code §302.255(4)(D); and

(B) maintains suitable employment for at least 12 consecutive months immediately following completion of the program;

(2) be awarded on an IRAP-participant basis; and

(3) not exceed the lesser of:

(A) the total cost for training the participant, excluding wages and benefits; or

(B) $10,000.

(b) In awarding a grant under this subchapter, the Agency may consider:

(1) anticipated economic value to the state upon participants' program completion;

(2) increased tax revenue generated by participants' wages; and

(3) the decrease in participants' use of state-funded benefits, attributable to the participants' job placements and earning projections.

§838.22. Program Objectives.

The following are the program objectives in administering the IRAP fund:

(1) To ensure that funds from the program are spent in workforce areas that are impacted by hurricanes and other natural disasters and to respond to immediate workforce needs and overall workforce shortages;

(2) To encourage the private sector to develop specialized IRAPs in Texas;

(3) To develop projects that, at completion of the training, will result in wages equal to or greater than the mid-level status of the apprenticeable occupation related to that IRAP; and

(4) To sponsor the attraction of advancing participant skills, at a minimum, to obtaining an industry credential in the related field of the IRAP.

§838.23. Administrative Costs Limitation.

Costs that are allowable, necessary, and reasonably incurred by a grant recipient to properly administer and manage the funds, such as salaries for grant recipient staff and administrative supplies, are considered administrative costs. Administrative costs may not exceed 10 percent of the total grant award.

§838.24. Performance.

The Agency may:

(1) develop and adopt annual performance measures and targets for IRAPs; and

(2) consider past performance of IRAPs in determining eligibility for funding.

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

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Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
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For further information, please call: (512) 689-9855

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SUBCHAPTER D. COMPLIANCE

40 TAC §838.31

The new rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§838.31. Funds Management and Accountability.

Grant recipients shall comply with the applicable rules in Chapter 802 of this title (relating to Integrity of the Texas Workforce System), specifically:

(1) Chapter 802, Subchapter D of this title (relating to Agency Monitoring Activities);

(2) Chapter 802, Subchapter F of this title (relating to Performance and Accountability);

(3) Chapter 802, Subchapter G of this title (relating to Corrective Actions); and

(4) Chapter 802, Subchapter H of this title (relating to Remedies).

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

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Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
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For further information, please call: (512) 689-9855

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.204

The Texas Behavioral Health Executive Council withdraws the proposed new §801.204, Licensing of Military Service Members, Military Veterans, and Military Spouses, which appeared in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4678).

Filed with the Office of the Secretary of State on September 15, 2020.

TRD-202003791
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: September 15, 2020
For further information, please call: (512) 305-7706

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 551. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §551.47

The Health and Human Services Commission withdraws the emergency adoption of the new 26 TAC §551.47, which appeared in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6006).

Filed with the Office of the Secretary of State on September 22, 2020.

TRD-202003906
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: September 24, 2020
For further information, please call: (512) 438-3161

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CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

SUBCHAPTER K. COVID-19 EMERGENCY RULE

26 TAC §553.2003

The Health and Human Services Commission withdraws the emergency adoption of the new 26 TAC §553.2003, which appeared in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5709).

Filed with the Office of the Secretary of State on September 22, 2020.

TRD-202003911
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: September 24, 2020
For further information, please call: (512) 438-3161

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CHAPTER 558. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

SUBCHAPTER H. STANDARDS SPECIFIC TO AGENCIES LICENSED TO PROVIDE HOSPICE SERVICES

DIVISION 7. HOSPICE INPATIENT UNITS

26 TAC §558.872

The Health and Human Services Commission withdraws the emergency adoption of the new 26 TAC §558.872, which appeared in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2477).

Filed with the Office of the Secretary of State on September 22, 2020.

TRD-202003919
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: September 24, 2020
For further information, please call: (512) 438-3161

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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

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

40 TAC §9.199, §9.299

The Department of Aging and Disability Services withdraws the emergency adoption of the new 40 TAC §9.199 and §9.299, which appeared in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6175).

Filed with the Office of the Secretary of State on September 22, 2020.

TRD-202003913
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: September 24, 2020
For further information, please call: (512) 438-3161

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

40 TAC §9.597

The Department of Aging and Disability Services withdraws the emergency adoption of the new 40 TAC §9.597, which appeared in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6178).

Filed with the Office of the Secretary of State on September 22, 2020.

TRD-202003915
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: September 24, 2020
For further information, please call: (512) 438-3161

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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER CC. COVID-19 EMERGENCY RULE

40 TAC §19.2803

The Department of Aging and Disability Services withdraws the emergency adoption of the new 40 TAC §19.2803, which appeared in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5713).

Filed with the Office of the Secretary of State on September 22, 2020.

TRD-202003928
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: September 24, 2020
For further information, please call: (512) 438-3161

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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 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 5. REGISTERED INTERIOR DESIGNERS

SUBCHAPTER I. DISCIPLINARY ACTION

22 TAC §5.183

The Texas Board of Architectural Examiners (Board) adopts amendments to Texas Administrative Code Part 1, Title 22, §5.183, concerning Violation by One Not a Registered Interior Designer. The amendments are adopted without changes to the proposed text as published in the May 22, 2020, issue of the *Texas Register* (45 TexReg 3423). The rule will not be republished.

Reasoned Justification.

The adopted amendments implement House Bill 2847 (86th Regular Session, 2019), which made two changes to the law governing the board's regulation of interior design. First, amendments to Tex. Occ. Code §1051.451 eliminated the Board's authority to impose administrative penalties against a nonregistrant for conduct related to the practice of interior design. Second, the bill repealed Tex. Occ. Code §1053.351, which previously made it a Class C misdemeanor criminal offense to knowingly violate Occupations Code §1053.151 (use, by a nonregistrant, of the term "registered interior designer" or words that imply a person is a registered interior designer) or a standard of conduct adopted under Occupations Code Chapter 1053 (the chapter regulating registered interior designers). Previously, the board adopted provisions under 22 TAC §5.183 implementing its former authority to impose administrative penalties against nonregistrants and addressing criminal prosecution as a potential remedy for violations of Chapter 1053. The adopted rules are necessary to update these obsolete provisions.

Amended §5.183(a) repeals criminal prosecution and imposition of an administrative penalty as potential remedies for a nonregistrant who violates Occupations Code Chapter 1053 or 22 Texas Administrative Code Chapter 5. Additionally, "denial of registration as a Registered Interior Designer, if applicable," is added as a potential remedy for the same, to clarify preexisting authority granted to the board under Tex. Occ. Code §1053.251(c).

Additionally, former subsections (c) and (d) of §5.183 are repealed under the adopted rule, as they described the Board's procedures to impose an administrative penalty against a nonregistrant. In place of these provisions, amended subsection (c) is adopted. Amended subsection (c) describes the procedure to issue a cease and desist order to a nonregistrant who violates Occupations Code Chapter 1053 or 22 Texas Administrative Code Chapter 5. This amended rule and the process it adopts are based on preexisting authority of the Board contained in Tex. Occ. Code §1051.504. Adoption of this amendment will enable the Board to meet its statutory obligation under Tex. Occ. Code §1051.501 to ensure that enforcement action is taken against an individual who violates a law under the Board's jurisdiction.

Adopted §5.183(d) implements the statutory repeal of administrative penalties against nonregistrants, and states that, if a nonregistrant commits a violation that would otherwise result in an administrative penalty under the penalty matrices adopted by the board in 22 TAC §§5.187 and/or 5.242, the person would be subject to a remedy described in subsection (a) in lieu of an administrative penalty. Finally, the term "nonregistrant" has been substituted for "person who is not a registered interior designer" throughout §5.183, as "nonregistrant" is a defined term in 22 Texas Administrative Code §5.5.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

STATUTORY AUTHORITY

Amended §5.183 is adopted under Tex. Occ. Code §1051.202, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code. The adopted rule implements recent changes to Tex. Occ. Code §1051.451, which eliminated the Board's authority to impose administrative penalties against a nonregistrant for conduct related to the practice of interior design; and the recent repeal of Tex. Occ. Code §1053.351, which previously made it a Class C misdemeanor criminal offense to knowingly violate Occupations Code §1053.151 or a standard of conduct adopted under Occupations Code Chapter 1053.

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 September 14, 2020.

TRD-202003759
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: October 4, 2020
Proposal publication date: May 22, 2020
For further information, please call: (512) 305-8519

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §§461.1 - 461.17, 461.19 - 461.22, 461.35

The Texas Behavioral Health Executive Council adopts the repeal of rules 461.1 - 461.17, 461.19 - 461.22, and 461.35, relating to General Rulings, without changes as published in the July 10, 2020 issue of the *Texas Register* (45 TexReg 4617) and will not be republished.

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior addition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in 507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with 501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by 501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with 507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in 2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 September 17, 2020.

TRD-202003846
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: October 7, 2020
Proposal publication date: July 10, 2020
For further information, please call: (512) 305-7706

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §§463.1 - 463.12, 463.14, 463.16 - 463.23, 463.25 - 463.31

The Texas Behavioral Health Executive Council adopts the repeal of rules 463.1 - 463.12, 463.14, 463.16 - 463.23, and 463.25 - 463.31, relating to Applications and Examinations, without changes as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4618) and will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this addition of the *Texas Register.*

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior addition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in 507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with 501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by 501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with 507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in 2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 September 17, 2020.

TRD-202003847
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: October 7, 2020
Proposal publication date: July 10, 2020
For further information, please call: (512) 305-7706

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

SUBCHAPTER A. APPLICATIONS AND LICENSING

22 TAC §§463.1 - 463.3

The Texas Behavioral Health Executive Council adopts new §§463.1 - 463.3, relating to Applications and Licensing. Sections 463.1 and 463.3 are adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4620) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §463.2 is being changed and adopted as republished below.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The new rules pertain to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§463.2. Reciprocity Agreements with Other Jurisdictions.

The Council may enter into reciprocal licensing agreements with other jurisdictions pursuant to §501.262 of the Psychologists' Licensing Act. In determining whether the requirements for licensure, certification, or registration in other jurisdictions are substantially equal to those prescribed by the Psychologists' Licensing Act, for the granting of licensure by reciprocity, the Council shall consider the following:

(1) whether the jurisdiction's qualifications for licensure are substantially equal to the requirements for a comparable license under the Psychologists' Licensing Act;

(2) whether a jurisdiction will license an applicant who would be ineligible for licensure in Texas due to a criminal history;

(3) whether the jurisdiction's cut-off score on a mutually required examination meets or exceeds the Texas cut-off score; and

(4) whether the jurisdiction's supervised experience requirements for a particular license provide a measure of public protection, which at a minimum is substantially equal to the supervised experience requirements for a comparable license under the Psychologists' Licensing Act.

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 September 17, 2020.

TRD-202003853
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: October 7, 2020
Proposal publication date: July 10, 2020
For further information, please call: (512) 305-7706

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SUBCHAPTER B. LICENSING REQUIREMENTS

22 TAC §§463.8 - 463.14

The Texas Behavioral Health Executive Council adopts new §§463.8 - 463.14, relating to Licensing Requirements. Sections 463.10 and 463.12 - 463.14 are adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4621) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §463.8 and §463.9 are being changed and adopted as republished below. Section 463.11 is also being adopted with minor changes and will be republished.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The new rules pertain to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§463.8. Licensed Psychological Associate.

(a) Licensure Requirements. An applicant for licensure as a psychological associate must:

(1) hold a graduate degree in psychology from a regionally accredited institution of higher education;

(2) provide documentation of at least six (6) semester credit hours of practicum, internship or other structured experience within the applicant's graduate degree program under the supervision of a licensed psychologist;

(3) pass all examinations required by the Council and meet each of the criteria listed in §501.2525(a)(2)-(9) of the Occupations Code; and

(4) demonstrate graduate level coursework in each of the following areas:

(A) Psychological Foundations:

(i) the biological bases of behavior;

(ii) the acquired or learned bases of behavior, including learning, thinking, memory, motivation and emotion;

(iii) the social, cultural, and systemic bases of behavior;

(iv) the individual or unique bases of behavior, including personality theory, human development, and abnormal behavior;

(B) Research and Statistics:

(i) the methodology used to investigate questions and acquire knowledge in the practice of psychology;

(ii) coursework in research design and methodology, statistics, critical thinking, and scientific inquiry;

(C) Applied Psychology:

(i) the history, theory, and application of psychological principles;

(ii) the application of psychological theories to individuals, families, and groups;

(D) Assessment:

(i) intellectual, personality, cognitive, physical, and emotional abilities, skills, interests, and aptitudes;

(ii) socio-economic, including behavioral, adaptive, and cultural assessment;

(E) Interventions:

(i) the application of therapeutic techniques;

(ii) behavior management;

(iii) consultation; and

(F) Scientific and Professional, Legal, and Ethical Issues.

(b) Degree Requirements.

(1) For purposes of this rule:

(A) a graduate degree in psychology means the name of the candidate's major or program of studies contains the term "psychology;"

(B) a specialist degree shall be treated as a graduate degree; and

(C) one semester credit hour equals one and one-half quarter credit hours.

(2) A degree utilized to meet the requirements of this rule must consist of at least sixty (60) semester credit hours, with no more than twelve (12) semester credit hours of practicum, internship, or structured experience being counted toward the total degree hour requirement.

(3) Applicants must demonstrate proof of the graduate level coursework required in subsection (a)(4) of this section by identifying which courses or training listed on their transcripts satisfy the required areas of study. Applicants may be required to provide the Council with an official course catalogue or description from their university or training program to verify whether a course meets the requirements of this rule.

(c) Supervision Requirements.

(1) A licensed psychological associate must practice under the supervision of a licensed psychologist and may not practice independently.

(2) Notwithstanding paragraph (1) of this subsection and subject to the limitations set out in paragraph (3) of this subsection, a licensed psychological associate may practice independently if:

(A) the licensee can demonstrate at least 3,000 hours of post-graduate degree experience in the delivery of psychological services under the supervision of one or more licensed psychologists;

(B) the supervised experience was obtained in not less than 24 consecutive months, but not more than 48 consecutive months, and in not more than three placements; and

(C) the licensee submits an application for independent practice evidencing proof of the required supervised experience.

(3) A licensed psychological associate meeting the requirements of paragraph (2) of this subsection shall be approved for independent practice, but remains subject to all Council rules, including Council §465.9 (relating to Competency).

(4) Applicants shall not utilize any supervised experience obtained from a psychologist with a restricted license or to whom they are related within the second degree of affinity or consanguinity to satisfy the requirements of this rule.

(5) Applicants licensed as specialists in school psychology may utilize experience acquired under that license if the experience was supervised by a licensed psychologist.

(d) Notwithstanding subsection (c)(3) of this section, an application for independent practice may be denied if a gap of more than two years exists between the completion of the supervised experience required for independent practice and the date of application for independent practice. The rules governing the waiver of gaps related to supervised experience found in Council rule §463.11 shall govern any request for a waiver under this rule.

(e) The correct title for a person licensed under this rule shall be "licensed psychological associate" or "psychological associate."

(f) A licensed psychological associate authorized to practice independently under this rule must inform all patients and clients as part of the informed consent process, whether the licensee holds a master's, specialist or doctoral degree, and provide the patient with a current copy of any informational pamphlet or brochure published by the Council describing the differences between the levels of training and education received in master's, specialist, and doctoral degree programs. In lieu of providing each patient or client with a copy of the required pamphlet or brochure, licensees may publish in a conspicuous manner, the pamphlet or brochure on their website or provide a link to the pamphlet or brochure on the Council's website.

(g) Continuation of Prior Law.

(1) Notwithstanding subsection (b)(1)(A) of this section, a person who begins a graduate program leading to a degree required by subsection (a)(1) of this section before August 31, 2019, shall be considered to have met the requirements of that subsection if the individual's degree is primarily psychological in nature. This subsection expires on August 31, 2021.

(2) Notwithstanding subsection (b)(2) of this section, a person who begins a graduate program leading to a degree required by subsection (a)(1) of this section before August 31, 2019, shall be considered to have met the requirements of that subsection if the individual has completed 42 semester credit hours with at least 27 of those hours in psychology. Applicants with degrees consisting of less than 42 semester credit hours may utilize a maximum of 12 semester credit hours from another graduate degree program in psychology to achieve the total of 42 semester credit hours. This subsection expires on August 31, 2021.

§463.9. Licensed Specialist in School Psychology.

(a) License Requirements. An applicant for licensure as a specialist in school psychology must:

(1) hold an appropriate graduate degree;

(2) provide proof of specific graduate level coursework

(3) provide proof of an acceptable internship;

(4) provide proof of passage of all examinations required by the Council; and

(5) meet the requirements imposed under §501.2525(a)(3) - (9) of the Occupations Code.

(b) Applicants who hold active certification as a Nationally Certified School Psychologist (NCSP) are considered to have met all requirements for licensure under this rule except for passage of the Jurisprudence Examination. Applicants relying upon this subsection must provide the Council with their NCSP certification number.

(c) Applicants who graduated from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association are considered to have met all training and internship requirements for licensure under this rule. Applicants relying upon this subsection must submit an official transcript indicating the degree and date the degree was awarded or conferred.

(d) Applicants who do not hold active NCSP certification, or who did not graduate from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association, must have completed a graduate degree in psychology from a regionally accredited institution of higher education. Applicants applying under this subsection must have completed, either as part of their graduate degree program or after conferral of their graduate degree, at least 60 graduate level semester credit hours from a regionally accredited institution of higher education. A maximum of 12 internship hours may be counted toward this requirement. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies is titled psychology.

(e) Applicants applying under subsection (d) of this section must submit evidence of graduate level coursework as follows:

(1) Psychological Foundations, including:

(A) biological bases of behavior;

(B) human learning;

(C) social bases of behavior;

(D) multi-cultural bases of behavior;

(E) child or adolescent development;

(F) psychopathology or exceptionalities;

(2) Research and Statistics;

(3) Educational Foundations, including any of the following:

(A) instructional design;

(B) organization and operation of schools;

(C) classroom management; or

(D) educational administration;

(4) Assessment, including:

(A) psychoeducational assessment;

(B) socio-emotional, including behavioral and cultural, assessment;

(5) Interventions, including:

(A) counseling;

(B) behavior management;

(C) consultation;

(6) Professional, Legal and Ethical Issues; and

(7) A Practicum.

(f) Applicants applying under subsection (d) of this section must have completed an internship with a minimum of 1200 hours and that meets the following criteria:

(1) At least 600 of the internship hours must have been completed in a public school.

(2) The internship must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled; or the internship must have been obtained in accordance with Council §463.11(d)(1) and (d)(2)(C) of this section.

(3) Any portion of an internship completed within a public school must be supervised by a Licensed Specialist in School Psychology, and any portion of an internship not completed within a public school must be supervised by a Licensed Psychologist.

(4) No experience which is obtained from a supervisor who is related within the second degree of affinity or consanguinity to the supervisee may be utilized.

(5) Unless authorized by the Council, supervised experience received from a supervisor practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(6) Internship hours must be obtained in not more than two placements. A school district, consortium, and educational co-op are each considered one placement.

(7) Internship hours must be obtained in not less than one or more than two academic years.

(8) An individual completing an internship under this rule must be designated as an intern.

(9) Interns must receive no less than two hours of supervision per week, with no more than half being group supervision. The amount of weekly supervision may be reduced, on a proportional basis, for interns working less than full-time.

(10) The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(g) Trainee Status.

(1) An applicant for the specialist in school psychology license who has not yet passed the Jurisprudence Examination, but who otherwise meets all licensing requirements under this rule, may practice in the public schools under the supervision of a Licensed Specialist in School Psychology, as a trainee for not more than one year.

(2) A trainee status letter shall be issued to an applicant upon proof of licensing eligibility, save and except proof of passage of the Jurisprudence Examination.

(3) An individual with trainee status is subject to all applicable laws governing the practice of psychology.

(4) A trainee's status may be suspended or revoked upon a showing of a violation of the Council's rules or any law pertaining to the practice of psychology, and the individual may be made the subject of an eligibility proceeding. The one-year period for trainee status shall not be tolled by any suspension of the trainee status.

(5) Following official notification from the Council upon passage of the Jurisprudence Examination or the expiration of one year, whichever occurs first, an individual's trainee status shall terminate.

(6) An individual practicing under trainee status must be designated as a trainee.

(h) Provision of psychological services in the public schools by unlicensed individuals.

(1) An unlicensed individual may provide psychological services under supervision in the public schools if:

(A) the individual is enrolled in an internship, practicum or other site based training in a psychology program in a regionally accredited institution of higher education;

(B) the individual has completed an internship that meets the requirements of this rule, and has submitted an application for licensure as a Licensed Specialist in School Psychology to the Council that has not been denied or returned; or

(C) the individual has been issued a trainee status letter.

(2) An unlicensed individual may not provide psychological services in a private school setting unless the activities or services provided are exempt under §501.004 of the Psychologists' Licensing Act.

(3) An unlicensed individual may not engage in the practice of psychology under paragraph (1)(B) of this subsection for more than forty-five days following receipt of the application by the Council.

(4) The authority to practice referenced in paragraph (1)(B) and (C) of this subsection is limited to the first or initial application filed by an individual under this rule, but is not applicable to any subsequent applications filed under this rule. The Council will not issue more than one trainee status letter to an individual, regardless of the number of applications filed.

§463.11. Supervised Experience Required for Licensure as a Psychologist.

(a) Required Supervised Experience. In order to qualify for licensure, an applicant must submit proof of a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have been ob-

tained through a formal internship that occurred within the applicant's doctoral degree program and at least 1,750 of which must have been received as a provisionally licensed psychologist (or under provisional trainee status under prior versions of this rule).

(1) A formal internship completed after the doctoral degree was conferred, but otherwise meeting the requirements of this rule, will be accepted for an applicant whose doctoral degree was conferred prior to September 1, 2017.

(2) The formal internship must be documented by the Director of Internship Training. Alternatively, if the Director of Internship Training is unavailable, the formal internship may be documented by a licensed psychologist with knowledge of the internship program and the applicant's participation in the internship program.

(3) Following conferral of a doctoral degree, 1,750 hours obtained or completed while employed in the delivery of psychological services in an exempt setting, while licensed or authorized to practice in another jurisdiction, or while practicing as a psychological associate or specialist in school psychology in this state may be substituted for the minimum of 1,750 hours of supervised experience required as a provisionally licensed psychologist if the experience was obtained or completed under the supervision of a licensed psychologist. Post-doctoral supervised experience obtained without a provisional license or trainee status prior to September 1, 2016, may also be used to satisfy, either in whole or in part, the post-doctoral supervised experience required by this rule if the experience was obtained under the supervision of a licensed psychologist.

(b) Satisfaction of Post-doctoral Supervised Experience with Doctoral Program Hours.

(1) Applicants who received their doctoral degree from a degree program accredited by the American Psychological Association (APA), the Canadian Psychological Association (CPA), or a substantially equivalent degree program, may count the following hours of supervised experience completed as part of their degree program toward the required post-doctoral supervised experience:

(A) hours in excess of 1,750 completed as part of the applicant's formal internship; and

(B) practicum hours certified by the doctoral program training director (or the director's designee) as meeting the following criteria:

(i) the practicum training is overseen by the graduate training program and is an organized, sequential series of supervised experiences of increasing complexity, serving to prepare the student for internship and ultimately licensure;

(ii) the practicum training is governed by a written training plan between the student, the practicum training site, and the graduate training program. The training plan must describe how the trainee's time is allotted and assure the quality, breadth, and depth of the training experience through specification of the goals and objectives of the practicum, the methods of evaluation of the trainee's performance, and reference to jurisdictional regulations governing the supervisory experience. The plan must also include the nature of supervision, the identities of the supervisors, and the form and frequency of feedback from the agency supervisor to the training faculty. A copy of the plan must be provided to the Council upon request;

(iii) the supervising psychologist must be a member of the staff at the site where the practicum experience takes place;

(iv) at least 50% of the practicum hours must be in service-related activities, defined as treatment or intervention, assessment, interviews, report-writing, case presentations, and consultations;

(v) individual face-to-face supervision shall consist of no less than 25% of the time spent in service-related activities;

(vi) at least 25% of the practicum hours must be devoted to face-to-face patient or client contact;

(vii) no more than 25% of the time spent in supervision may be provided by a licensed allied mental health professional or a psychology intern or post-doctoral fellow; and

(viii) the practicum must consist of a minimum of 15 hours of experience per week.

(2) Applicants applying for licensure under the substantial equivalence clause must submit an affidavit or unsworn declaration from the program's training director or other designated leader familiar with the degree program, demonstrating the substantial equivalence of the applicant's degree program to an APA or CPA accredited program at the time of the conferral of applicant's degree.

(3) An applicant and the affiant or declarant shall appear before the agency in person to answer any questions, produce supporting documentation, or address any concerns raised by the application if requested by a council or board member or the Executive Director. Failure to comply with this paragraph shall constitute grounds for denial of substantial equivalency under this rule.

(c) General Requirements for Supervised Experience. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(1) Each period of supervised experience must be obtained in not more than two placements, and in not more than 24 consecutive months.

(2) Gaps Related to Supervised Experience.

(A) Unless a waiver is granted by the Council, an application for a psychologist's license will be denied if a gap of more than seven years exists between the date an applicant's doctoral degree was officially conferred and the date of the application.

(B) The Council shall grant a waiver upon a showing of good cause by the applicant. Good cause shall include, but is not limited to:

(i) proof of continued employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Psychologists' Licensing Act, during any gap period;

(ii) proof of professional development, which at a minimum meets the Council's professional development requirements, during any gap period;

(iii) proof of enrollment in a course of study in a regionally accredited institution or training facility designed to prepare the individual for the profession of psychology during any gap period; or

(iv) proof of licensure as a psychologist and continued employment in the delivery of psychological services in another jurisdiction.

(3) A formal internship with rotations, or one that is part of a consortium within a doctoral program, is considered to be one placement. A consortium is composed of multiple placements that have entered into a written agreement setting forth the responsibilities and financial commitments of each participating member, for the purpose of offering a well-rounded, unified psychology training program whereby trainees work at multiple sites, but obtain training from one primary site with some experience at or exposure to aspects of the other sites that the primary site does not offer.

(4) The supervised experience required by this rule must be obtained after official enrollment in a doctoral program.

(5) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(6) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(7) Experience obtained from a psychologist who is related within the second degree of affinity or consanguinity to the supervisee may not be utilized to satisfy the requirements of this rule.

(8) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Council rules.

(9) Unless authorized by the Council, supervised experience received from a psychologist practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(10) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a Provisionally Licensed Psychologist or a Licensed Psychological Associate may use that title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a Licensed Specialist in School Psychology may use that title so long as the supervised experience takes place within a school, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted only if authorized under §501.004 of the Psychologists' Licensing Act, or another Council rule.

(d) Formal Internship Requirements. The formal internship hours must be satisfied by one of the following types of formal internships:

(1) The successful completion of an internship program accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC); or

(2) The successful completion of an organized internship meeting all of the following criteria:

(A) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(B) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(C) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(D) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(E) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(F) At least 25% of trainee's time must be in direct patient/client contact.

(G) The internship must include a minimum of two hours per week of regularly scheduled formal, face-to-face individual supervision. There must also be at least four additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(H) Training must be post-clerkship, post-practicum and post-externship level.

(I) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(J) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work, including expected competencies; or

(3) The successful completion of an organized internship program in a school district meeting the following criteria:

(A) The internship experience must be provided at or near the end of the formal training period.

(B) The internship experience must require a minimum of 35 hours per week over a period of one academic year, or a minimum of 20 hours per week over a period of two consecutive academic years.

(C) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(D) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(E) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(F) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(G) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(H) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(I) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(J) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(K) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(L) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(M) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(e) Industrial/Organizational Requirements. Individuals from an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement but must complete a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have taken place after conferral of the doctoral degree and in accordance with subsection (a) of this section. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Council rules prohibit a psychologist from practicing in an area in which they do not have sufficient training and experience, of which a formal internship is considered to be an integral requirement.

(f) Licensure Following Respecialization.

(1) In order to qualify for licensure after undergoing respecialization, an applicant must demonstrate the following:

(A) conferral of a doctoral degree in psychology from a regionally accredited institution of higher education prior to undergoing respecialization;

(B) completion of a formal post-doctoral respecialization program in psychology which included at least 1,750 hours in a formal internship;

(C) completion of respecialization within the two year period preceding the date of application for licensure under this rule; and

(D) upon completion of the respecialization program, at least 1,750 hours of supervised experience obtained as a provisionally licensed psychologist (or under provisional trainee status under prior versions of this rule).

(2) An applicant meeting the requirements of this subsection is considered to have met the requirements for supervised experience under this rule.

(3) The rules governing the waiver of gaps related to supervised experience shall also govern any request for waiver of a gap following respecialization.

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

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SUBCHAPTER C. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, VETERANS, AND MILITARY SPOUSES

22 TAC §463.20

The Texas Behavioral Health Executive Council adopts new §463.20, relating to Licensing Provisions Related to Military Service Members, Veterans, and Military Spouses. Section 463.20 was proposed in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4630). In response to non-substantive changes being requested by the Office of the Texas Governor, §463.20 is being changed and adopted as republished below.

Reasoned Justification.

The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The new rule pertains to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent

with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§463.20. Special Provisions Applying to Military Service Members, Veterans, and Spouses.

(a) Substantial Equivalency Determination. In accordance with §55.004 of the Occupations Code, the licensing requirements for a license to practice psychology in another jurisdiction will be considered substantially equivalent to Texas' requirements if the other jurisdiction's requirements meet or exceed the following criteria:

(1) Licensed Specialist in School Psychology.

(A) The completion of a training program in school psychology that has been approved or accredited by the American Psychological Association or the National Association of School Psychologists, or completion of a master's degree in psychology with specific course work similar to the coursework required in the Council's rules; and

(B) Passage of the School Psychology Examination.

(2) Licensed Psychological Associate.

(A) A graduate degree that is primarily psychological in nature and consisting of at least 42 semester credit hours in total with at least 27 semester credit hours in psychology courses;

(B) Passage of the EPPP at the Texas cut-off score; and

(C) A minimum of 6 semester credit hours of practicum, internship, or experience in psychology, under the supervision of a licensed psychologist.

(3) Licensed Psychologist.

(A) A doctoral degree in psychology;

(B) Passage of the EPPP at the Texas cut-off score; and

(C) A minimum of two years or 3,000 hours of supervised experience under a licensed psychologist.

(b) In accordance with §55.007 of the Occupations Code, an applicant who is a military service member or military veteran, as defined by Chapter 55, Occupations Code, shall receive credit toward the following licensing requirements for verified military service, training, or education:

(1) Licensed Specialist in School Psychology. A military service member or military veteran who has delivered psychological services within the military for at least one year is considered to have met the following requirements for this type of license: a practicum and 600 internship hours.

(2) Licensed Psychological Associate. A military service member or military veteran who has delivered psychological services within the military for at least one year is considered to have met the following requirements for this type of license: 6 semester credit hours of supervised experience.

(3) Licensed Psychologist. A military service member or military veteran who has delivered psychological services within the military for at least one year, following conferral of a doctoral degree, is considered to have met the following requirements for this type of license: one year or 1,750 hours of supervised experience.

(c) A military service member or military veteran may not receive credit toward licensing requirements due to military service, training, or education if they hold a license issued by another jurisdiction that has been restricted, or they have a disqualifying criminal history.

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

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SUBCHAPTER D. SPECIALTY CERTIFICATIONS

22 TAC §463.25

The Texas Behavioral Health Executive Council adopts new §463.25, relating to Specialty Certifications. Section 463.25 is adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4632) and will not be republished.

Reasoned Justification.

The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Coun-

cil to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The new rule pertains to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§463.25. Health Service Psychologist Specialty Certification.

(a) Health Service Psychologist (HSP) is a specialty certification from the Council available to Texas licensed psychologists who are listed in the National Register of Health Service Psychologists.

(b) The Council will issue the HSP specialty certification to actively licensed psychologists upon receipt of proof from the National Register that the licensee currently holds the HSP credential from the National Register.

(c) The HSP specialty certification by the Council must be renewed in connection with the person's license. Renewal of the HSP specialty certification requires payment of the renewal fee established by the Council.

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

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SUBCHAPTER E. EXAMINATIONS

22 TAC §463.30, §463.31

The Texas Behavioral Health Executive Council adopts new rules §463.30 and §463.31, relating to Examinations. Section 463.30 and §463.31 were proposed in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4634). In response to non-substantive changes being requested by the Office of the Texas Governor, §463.30 and §463.31 have been changed and adopted as republished below.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Coun-

cil to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The new rules pertain to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§463.30. Examinations Required for Licensure.

(a) Jurisprudence Examination. All applicants for licensure are required to pass the Jurisprudence Examination prior to the Council granting a license.

(b) School Psychology Examination. Applicants for licensure as a specialist in school psychology shall take the School Psychology Examination administered by the Educational Testing Service before applying for licensure as a specialist in school psychology.

(c) Examination for Professional Practice in Psychology (EPPP). All applicants for licensure as a psychological associate or psychologist are required to pass the EPPP prior to the Council granting a license. An applicant who has taken the EPPP either in the past or in another jurisdiction will not be required to retake the exam provided the applicant's score satisfies the Council's current minimum acceptable score for licensure.

§463.31. Minimum Passing Scores for Examinations.

(a) Cut-off Scores for the Examination for Professional Practice in Psychology. The minimum acceptable score for the Examination for Professional Practice in Psychology is 500 for computer based examinations and seventy percent (70%) for paper based versions of the test.

(b) Cut-off Scores for the School Psychology Examination. The minimum acceptable score for the School Psychology Examination is the same as the current cut-off score for the Nationally Certified School Psychologist credential.

(c) Cut-off Scores for the Jurisprudence Examination. The minimum acceptable score for the Jurisprudence Examination for all applicants is ninety percent (90%).

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

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Texas State Board of Examiners of Psychologists
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Proposal publication date: July 10, 2020
For further information, please call: (512) 305-7706

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SUBCHAPTER F. PROFESSIONAL DEVELOPMENT

22 TAC §463.35

The Texas Behavioral Health Executive Council adopts new §463.35, relating to Professional Development. Section 463.35 was proposed in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4635). In response to non-substantive changes being requested by the Office of the Texas Governor, §463.35 is being changed and adopted as republished below.

Reasoned Justification.

The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The new rule pertains to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§463.35. Professional Development.

(a) Persons licensed under Chapter 501 are obligated to continue their professional education by completing a minimum of 40 hours of professional development during each renewal period they hold a license. At least 6 of these hours shall be in ethics, the Council's rules, or professional responsibility, and another 6 or more hours shall be in cultural diversity. Acceptable cultural diversity hours include, but are not limited to professional development regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.

(b) Relevancy. All professional development hours shall be directly related to the practice of psychology. The Council shall make the determination as to whether the activity or publication claimed by the licensee is directly related to the practice of psychology. In order to establish relevancy to the practice of psychology, the Council may require a licensee to produce course descriptions, conference catalogs and syllabi, or other material as warranted by the circumstances. A person may not claim professional development credit for personal psychotherapy, workshops for personal growth, the provision of services to professional associations by a licensee, foreign language courses, or computer training classes.

(c) At least half of the professional development hours required by this rule shall be obtained from or endorsed by a provider listed in subsection (f)(1) of this section.

(d) The Council shall not pre-approve professional development credit.

(e) Approved Professional Development Activities. The Council shall accept professional development hours obtained by participating in one or more of the following activities, provided that the specific activity may not be used for credit in more than one renewal period:

(1) attendance or participation in a formal professional development activity for which professional development hours have been pre-assigned by a provider;

(2) teaching or attendance as an officially enrolled student in a graduate level course in psychology at a regionally accredited institution of higher education;

(3) presentation of a program or workshop; and

(4) authoring or editing publications.

(f) Approved Professional Development Providers. The Council shall accept professional development hours from the following providers:

(1) national, regional, state, or local psychological associations; public school districts; regional service centers for public school districts; state or federal agencies; or psychology programs, or counseling centers which host accredited psychology training programs, at regionally accredited institutions of higher education; and

(2) other formally organized groups providing professional development that is directly related to the practice of psychology. Examples of such providers include: public or private institutions, professional associations, and training institutes devoted to the study or practice of particular areas or fields of psychology; and professional associations relating to other mental health professions such as psychiatry, counseling, or social work.

(g) Credit for professional development shall be provided as follows:

(1) For attendance at formal professional development activities, the number of hours pre-assigned by the provider.

(2) For teaching or attendance of a graduate level psychology course, 4 hours per credit hour. A particular course may not be taught or attended by a licensee for professional development credit more than once.

(3) For presentations of workshops or programs, 3 hours for each hour actually presented, for a maximum of 6 hours per year.

(4) For publications, 8 hours for authoring or co-authoring a book; 6 hours for editing a book; 4 hours for authoring a published article or book chapter. A maximum credit of 8 hours for publication is permitted for any one year.

(h) Professional development hours shall have been obtained during the renewal period for which they are submitted and may not be utilized to fulfill the requirements for more than one renewal period. However, if the hours were obtained during the license renewal month and are not needed for compliance for that renewal period, they may be submitted the following renewal period to meet that period's professional development requirements.

(i) The Council shall accept as documentation of professional development:

(1) for hours received from attendance or participation in formal professional development activities, a certificate or other document containing the name of the sponsoring organization, the title of the activity, the number of pre-assigned professional development hours for the activity, and the name of the licensee claiming the hours;

(2) for hours received from attending college or university courses, official grade slips or transcripts issued by the institution of higher education;

(3) for hours received for teaching college or university courses, documentation demonstrating that the licensee taught the course;

(4) for presenters of professional development workshops or programs, copies of the official program announcement naming the licensee as a presenter and an outline or syllabus of the contents of the program or workshop;

(5) for authors or editors of publications, a copy of the article or table of contents or title page bearing the name of licensee as the author or editor;

(6) for online or self-study courses, a copy of the certificate of completion containing the name of the sponsoring organization, the title of the course, the number of pre-assigned professional development hours for the course, and stating the licensee passed the examination given with the course.

(j) It is the responsibility of each licensee to maintain documentation of all professional development hours claimed under this rule and to provide this documentation upon request by the Council. Licensees shall maintain documentation of all professional development hours for 5 years following the renewal period in which those hours were utilized.

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

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SUBCHAPTER G. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

22 TAC §463.40

The Texas Behavioral Health Executive Council adopts new §463.40, relating to Criminal History and License Eligibility. Section 463.40 is adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4638) and will not be republished.

Reasoned Justification.

The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Coun-

cil to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The new rule pertains to the qualifications necessary to obtain a license and continuing education requirements for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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CHAPTER 465. RULES OF PRACTICE

22 TAC §§465.1 - 465.18, 465.20 - 465.22, 465.32 - 465.35, 465.37, 465.38

The Texas Behavioral Health Executive Council adopts the repeal of rules 465.1 - 465.18, 465.20 - 465.22, 465.32 - 465.35, 465.37, and 465.38, relating to Rules of Practice, without changes as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4639) and will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this addition of the *Texas Register.*

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior addition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in 507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with 501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by 501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with 507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in 2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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22 TAC §§465.1, 465.2, 465.4, 465.6, 465.8 - 465.18, 465.20 - 465.22, 465.32 - 465.35, 465.38

The Texas Behavioral Health Executive Council adopts new §§465.1, 465.2, 465.4, 465.6, 465.8 - 465.18, 465.20 - 465.22, 465.32 - 465.35, and 465.38, relating to Rules of Practice. Sections 465.1, 465.6, 465.8 - 465.18, 465.20 - 465.22, and 465.32 - 465.35 are adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4641) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §§465.2, 465.4, and 465.38 are being changed and adopted as republished below.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The new rules pertain to rules of practice for psychology; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

Texas Psychological Association - §465.2

Summary of comments against the rule.

A commenter requested an amendment to §465.2(a)(7) to clarify or allow for supervision to be provided by asynchronous means at least fifty percent of the time.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency declines to amend rule §465.2 as requested by the commenter. The agency believes the requested change would be substantive if made, and would require republication before adoption. The agency also believes further information and investigation regarding this requested change may be needed before proposing any future amendments for this rule. For these reasons the agency declines to make the requested change, and hereby adopts the rule with no changes.

Statutory Authority.

The rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§465.2. Supervision.

(a) Supervision in General. The following rules apply to all supervisory relationships.

(1) Licensee is responsible for the supervision of all individuals that the licensee employs or utilizes to provide psychological services of any kind.

(2) Licensees shall ensure that their supervisees have legal authority to provide psychological services.

(3) Licensees may delegate only those responsibilities that supervisees may legally and competently perform.

(4) All individuals who receive psychological services requiring informed consent from an individual under supervision must be informed in writing of the supervisory status of the individual and how the patient or client may contact the supervising licensee directly.

(5) All materials relating to the practice of psychology, upon which the supervisee's name or signature appears, must indicate the supervisory status of the supervisee. Supervisory status must be indicated by one of the following:

(A) Supervised by (name of supervising licensee);

(B) Under the supervision of (name of supervising licensee);

(C) The following persons are under the supervision of (name of supervising licensee); or

(D) Supervisee of (name of supervising licensee).

(6) Licensees shall provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee, the availability of other qualified licensees for consultation, and the type of psychological services being provided.

(7) Licensees shall utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance. Methods of supervision may include synchronous remote or electronic means.

(8) Licensees must be competent to perform any psychological services being provided under their supervision.

(9) Licensees shall document their supervision activities in writing, including any remote or electronic supervision provided. Documentation shall include the dates, times, and length of supervision.

(10) Licensees may only supervise the number of supervisees for which they can provide adequate supervision.

(b) Supervision of Students, Interns, Residents, Fellows, and Trainees. The following rules apply to all supervisory relationships involving students, interns, residents, fellows, and trainees.

(1) Unlicensed individuals providing psychological services pursuant to §§501.004(a)(2), 501.2525(a)(2)(A), or 501.260(b)(3) of the Occupations Code must be under the supervision of a qualified supervising licensee at all times.

(2) Supervision must be provided by a qualified supervising licensee before it will be accepted for licensure purposes.

(3) A licensee practicing under a restricted status license is not qualified to, and shall not provide supervision for a person seeking to fulfill internship or practicum requirements or a person seeking licensure under the Psychologists' Licensing Act, regardless of the setting in which the supervision takes place, unless authorized to do so by the Council. A licensee shall inform all supervisees of any disciplinary order restricting the licensee's license and assist the supervisees with finding appropriate alternate supervision.

(4) A supervisor must document in writing a supervisee's performance during a practicum, internship, or period of supervised experience required for licensure. The supervisor must provide this documentation to the supervisee.

(5) A supervisor may allow a supervisee, as part of a required practicum, internship, or period of supervised experience required for licensure under Chapter 501, to supervise others in the delivery of psychological services.

(6) Licensees may not supervise an individual to whom they are related within the second degree of affinity or consanguinity.

(c) Supervision of Provisionally Licensed Psychologists and Licensed Psychological Associates. The following rules apply to all supervisory relationships involving Provisionally Licensed Psychologists and Licensed Psychological Associates.

(1) Provisionally Licensed Psychologists must be under the supervision of a Licensed Psychologist and may not engage in independent practice unless the provisional licensee is licensed in another state to independently practice psychology and is in good standing in that state.

(2) A Provisionally Licensed Psychologist may, as part of a period of supervised experience required for licensure as a psychologist, supervise others in the delivery of psychological services.

(3) A supervisor must provide at least one hour of individual supervision per week. A supervisor may reduce the amount of weekly supervision on a proportional basis for supervisees working less than full-time.

(d) Supervision of Licensed Specialists in School Psychology interns and trainees. The following rules apply to all supervisory relationships involving Licensed Specialists in School Psychology, as well as all interns and trainees working toward licensure as a specialist in school psychology.

(1) A supervisor must provide an LSSP trainee with at least one hour of supervision per week, with no more than half being group supervision. A supervisor may reduce the amount of weekly supervision on a proportional basis for trainees working less than full-time.

(2) Supervision within the public schools may only be provided by a Licensed Specialist in School Psychology who has a minimum of 3 years of experience providing psychological services within the public school system without supervision. To qualify, a licensee must be able to show proof of their license, credential, or authority to provide unsupervised school psychological services in the jurisdiction where those services were provided, along with documentation from the public school(s) evidencing delivery of those services.

(3) Supervisors must sign educational documents completed for students by the supervisee, including student evaluation reports, or similar professional reports to consumers, other professionals, or other audiences. It is not a violation of this rule if supervisors do not sign documents completed by a committee reflecting the deliberations of an educational meeting for an individual student which the supervisee attended and participated in as part of the legal proceedings required by federal and state education laws, unless the supervisor also attended and participated in such meeting.

(4) Supervisors shall document all supervision sessions. This documentation must include information about the duration of sessions, as well as the focus of discussion or training. The documentation must also include information regarding:

(A) any contracts or service agreements between the public school district and university school psychology training program;

(B) any contracts or service agreements between the public school district and the supervisee;

(C) the supervisee's professional liability insurance coverage, if any;

(D) any training logs required by the school psychology training program; and

(E) the supervisee's trainee or licensure status.

(5) Supervisors must ensure that each individual completing any portion of the internship required for licensure as an LSSP, is provided with a written agreement that includes a clear statement of the expectations, duties, and responsibilities of each party, including the total hours to be performed by the intern, benefits and support to be provided by the supervisor, and the process by which the intern will be supervised and evaluated.

(6) Supervisors must ensure that supervisees have access to a process for addressing serious concerns regarding a supervisee's performance. The process must protect the rights of clients to receive quality services, assure adequate feedback and opportunities for improvement to the supervisee, and ensure due process protection in cases of possible termination of the supervisory relationship.

(e) The various parts of this rule should be construed, if possible, so that effect is given to each part. However, where a general provision conflicts with a more specific provision, the specific provision shall control.

§465.4. Employment of Individuals Not Licensed by the Council.

(a) Individuals Licensed in Another Profession. Psychologists may employ or utilize individuals who are licensed members of another profession to provide only activities or services permitted by the applicable license or licenses held by that individual. In addition, a person licensed under Chapter 501 may supervise a licensed member of another profession to the extent permissible by the other profession's statute and regulations. Any service provided by the licensed member of another profession may not be described or represented to the patient or client as psychological services, and the individual must be clearly identified to the patient or client as a licensee of the applicable profession who is providing services pursuant to that individual's own license.

(b) Unlicensed Individuals. Psychologists may employ unlicensed individuals only to perform services which do not constitute the practice of psychology or the activities and services of another licensed profession. Permissible duties include:

(1) Secretarial and clerical duties such as scheduling appointments or processing insurance forms;

(2) Data gathering, such as administering, proctoring, or scoring non-projective tests, obtaining histories or obtaining documentation for record keeping purposes, provided that it does not require psychological education or involve the provision of psychological services; and

(3) Technical, educational, or other duties that are adjunctive to and incorporated into the provision of psychological services such as providing educational information or assisting a client's work with a computer, special equipment or special materials, provided that the duties do not require psychological education or involve the provision of psychological services or the services or activities of another licensed profession.

§465.38. Psychological Services for Schools.

(a) This rule acknowledges the unique difference in the delivery of school psychological services in public and private schools from psychological services in the private sector. The Council recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in public and private schools which reflect these occupational distinctions from the private practice of psychology.

(b) Scope of Practice.

(1) An LSSP is a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs, conducting behavioral assessments, and designing and implementing behavioral interventions and supports.

(2) The assessment of emotional or behavioral disturbance, solely for educational purposes, using psychological techniques and procedures is considered the practice of school psychology.

(3) The delivery of school psychological services in the public schools of this state shall be consistent with nationally recognized standards for the practice of school psychology. Licensees providing school psychological services in a private school should comply with those same nationally recognized standards where possible, but at a minimum, must comply with all applicable Council rules, including those related to informed consent, notification of the right to file a complaint, competency, forensic services, and misuse of services.

(c) The specialist in school psychology license permits the licensee to provide school psychological services only in public and private schools. A person utilizing this license may not provide psychological services in any context or capacity outside of a public or private school.

(d) The correct title for an individual holding a specialist in school psychology license is Licensed Specialist in School Psychology or LSSP. An LSSP who has achieved certification as a Nationally Certified School Psychologist (NCSP) may use this credential along with the license title of LSSP.

(e) Providers of Psychological Services Within the Public Schools.

(1) School psychological services may be provided in Texas public schools only by individuals authorized by this Council to provide such services. Individuals who may provide such school psychological services include:

(A) LSSPs;

(B) Those individuals listed in §463.11; and

(C) Individuals seeking to fulfill the licensing requirements of §463.10 of this title (relating to Licensed Psychological Associate) or §463.12 of this title (relating to Licensed Psychologist).

(2) Licensees who do not hold the specialist in school psychology license may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy, but any such contracting may not involve the broad range of school psychological services listed in subsection (b)(1) of this section.

(3) An LSSP who contracts with a school to provide school psychological services must notify the school of any intent or plan to subcontract or assign those services to another provider prior to entering into the agreement. An LSSP subject to this provision shall be responsible for ensuring the school psychological services delivered comply with subsection (b)(3) of this section.

(f) Compliance with Applicable Education Laws. LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

(1) Texas Education Code;

(2) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g;

(3) Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §1400 et seq.;

(4) Texas Public Information Act, Texas Government Code, Chapter 552;

(5) Section 504 of the Rehabilitation Act of 1973;

(6) Americans with Disabilities Act (ADA) 42 U.S.C. §12101; and

(7) HIPAA when practicing in a private school.

(g) Informed Consent in a Public School. Informed consent for a Licensed Specialist in School Psychology must be obtained in accordance with the Individuals with Disabilities Education Improvement Act (IDEIA) and the U.S. Department of Education's rules governing parental consent when delivering school psychological services in the public schools, and is considered to meet the requirements for informed consent under Board rules. No additional informed consent, specific to any Council rules, is necessary in this context. Licensees providing psychological services under subsection (e)(2) of this section, or in a private school however, must obtain informed consent as otherwise required by the Council rules.

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 September 17, 2020.

TRD-202003860
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: July 10, 2020
For further information, please call: (512) 305-7706

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CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §§469.1 - 469.12, 469.14, 469.15

The Texas Behavioral Health Executive Council adopts the repeal of §§469.1 - 469.12, 469.14, and 469.15, relating to Complaints and Enforcement, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4654). The rules will not be republished.

Reasoned Justification

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 September 17, 2020.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706

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CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §§470.1 - 470.6, 470.8 - 470.12, 470.15 - 470.24

The Texas Behavioral Health Executive Council adopts the repeal of §§470.1 - 470.6, 470.8 - 470.12, and 470.15 - 470.24, relating to Administrative Procedure, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4656). The rules will not be republished.

Reasoned Justification

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: July 10, 2020
For further information, please call: (512) 305-7706

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CHAPTER 470. SCHEDULE OF SANCTIONS

22 TAC §470.1

The Texas Behavioral Health Executive Council adopts new §470.1, relating to Schedule of Sanctions. Section 470.1 is adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4657) and will not be republished.

Reasoned Justification.

The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The new rule pertains to a schedule of sanctions; and incorporates changes necessary to implement H.B. 1501. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may

not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706

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CHAPTER 471. RENEWALS

22 TAC §§471.1, 471.3 - 471.6

The Texas Behavioral Health Executive Council adopts the repeal of §§471.1 and 471.3 - 471.6, relating to Renewals, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4659). The rules will not be republished.

Reasoned Justification

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706

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CHAPTER 473. FEES

22 TAC §§473.1 - 473.5, 473.8

The Texas Behavioral Health Executive Council adopts the repeal of rules §§473.1 - 473.5 and 473.8, relating to Fees, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4660). The rules will not be republished.

Reasoned Justification

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 September 17, 2020.

TRD-202003852
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: October 7, 2020
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For further information, please call: (512) 305-7706

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.121

The Texas State Board of Public Accountancy adopts the repeal of §523.121, concerning CPE for Non-CPA Owners, without changes to the proposed text as published in the July 31, 2020 issue of the *Texas Register* (45 TexReg 5297). The rule will not be republished.

The Texas Public Accountancy Act was amended during the last legislative session to eliminate the need for non-CPA firm owners to take Continuing Professional Education. The adoption of the repeal reflects the elimination made during the legislative session.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 September 17, 2020.

TRD-202003838
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 7, 2020
Proposal publication date: July 31, 2020
For further information, please call: (512) 305-7842

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPIST

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §801.2, §801.11

The Texas Behavioral Health Executive Council adopts amended §801.2 and new §801.11, relating to General Provisions. Section 801.11 is adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4661) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §801.2 is being changed and adopted as republished below.

Reasoned Justification.

The amended and new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The amended and new rules are the definitions for the rules in Chapter 801 and pertain to the general operations for the Texas State Board of Examiners of Marriage and Family Therapists; the rules also incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

Texas Counseling Association - rule §801.11

Summary of comments against the rule.

Commenters requested rule §801.11 include, or retain, a provision that states the public may request topics be added to the Board's agenda.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency declines to amend the rule as requested by the commenters. The public has several ways that they can contact the Board or the Council should they have issues or concerns. The public may submit a petition for a rule to the Council, they can comment at public Board and Council meetings, and they can also contact agency staff with their concerns. For these reasons the agency declines to make the requested changes, and hereby adopts the rule with no changes.

Statutory Authority.

The rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has com-

plied with Chapters 502 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§801.2. Definitions.

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

(1) Accredited institutions or programs--An institution of higher education accredited by a regionally accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education.

(2) Act--Texas Occupations Code, Chapter 502, the Licensed Marriage and Family Therapist Act.

(3) Board--The Texas State Board of Examiners of Marriage and Family Therapists.

(4) Client--An individual, family, couple, group, or organization who receives or has received services from a person identified as a marriage and family therapist who is either licensed by the council or unlicensed.

(5) Council--The Texas Behavioral Health Executive Council.

(6) Council Act--Texas Occupations Code, Chapter 507, concerning the Texas Behavioral Health Executive Council.

(7) Council rules--22 Texas Administrative Code, Chapters 801 and 881 to 885.

(8) Endorsement--The process whereby the council reviews licensing requirements that a license applicant completed while under the jurisdiction of an out-of-state marriage and family therapy regulatory board. The council may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(9) Executive director--the executive director for the Texas Behavioral Health Executive Council.

(10) Family system--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, and life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(11) Group supervision--Supervision that involves a minimum of three and no more than six marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

(12) Individual supervision--Supervision of no more than two marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

(13) Jurisprudence exam--An online learning experience based on the Act, the Council Act, and council rules, and other state laws and rules relating to the practice of marriage and family therapy.

(14) License--A marriage and family therapist license, a marriage and family therapist associate license, a provisional marriage and family therapist license, or a provisional marriage and family therapist associate license.

(15) Licensed marriage and family therapist (LMFT)--A qualified individual licensed by the council to provide marriage and family therapy for compensation.

(16) Licensed marriage and family therapist associate (LMFT Associate)--A qualified individual licensed by the council to provide marriage and family therapy for compensation under the supervision of a council-approved supervisor. The appropriate council-approved terms to refer to an LMFT Associate are: "Licensed Marriage and Family Therapist Associate" or "LMFT Associate." Other terminology or abbreviations like "LMFT A" are not council-approved and may not be used.

(17) Licensee--Any person licensed by the council.

(18) Licensure examination--The national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

(19) Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(20) Month--A calendar month.

(21) Person--An individual, corporation, partnership, or other legal entity.

(22) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally recognized church, denomination or sect, or an integrated auxiliary of a church as defined in 26 CFR §1.6033-2(h) (relating to Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980));

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

(23) Supervision--

(A) Supervision for licensure--The guidance or management in the provision of clinical services by a marriage and family therapy supervisee or LMFT Associate, which must be conducted for at least one supervision hour each week, except for good cause shown.

(B) Supervision, Council-ordered--For the oversight and rehabilitation in the provision of clinical services by a licensee under a Council Order, defined by the Order and the Council-Ordered Supervision Plan, and must be conducted as specified in the Council Order and Supervision Plan (generally in face-to-face, one-on-one sessions).

(24) Supervision hour--50 minutes.

(25) Supervisor--An LMFT with supervisor status meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements). The appropriate council-approved terminology to use in reference to a Supervisor is: "Supervisor," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S" or "LMFT Supervisor." Other terminology or abbreviations may not be used.

(26) Technology-assisted services--Providing therapy or supervision with technologies and devices for electronic communication and information exchange between a licensee in one location and a client or supervisee in another location.

(27) Therapist--A person who holds a license issued by the council.

(28) Waiver--The suspension of educational, professional, or examination requirements for an applicant who meets licensing requirements under special conditions.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
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Proposal publication date: July 10, 2020
For further information, please call: (512) 305-7700

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SUBCHAPTER B. THE BOARD

22 TAC §§801.11 - 801.19

The Texas Behavioral Health Executive Council adopts the repeal of §§801.11 - 801.19, relating to the Board, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4665). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register.*

Reasoned Justification

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorize the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

Texas Counseling Association

Summary of comments against the rule.

Commenters requested the agency not repeal rule §801.12, and allow for individuals to submit petitions for rule adoption directly to the Board.

Commenters requested the agency not repeal rule §801.15, and retain a rule that states the Board will comply with all laws pertaining to impartiality and nondiscrimination.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency declines to retain rule §801.12 as requested by the commenters. The Council has the statutory authority to propose and adopt rules. The public may submit a petition for rule adoption to the Council, and if the petition relates to a matter that must originate from a particular Board, then staff will forward that petition to a particular Board for consideration. For these reasons the agency declines to make the requested changes, and hereby adopts the repeal of the rule with no changes.

The agency declines to retain rule §801.15 as requested by the commenters. The Council has a rule pertaining to conflicts of interest and recusals, 22 TAC §881.5. Additionally, the Council has a Compact with Texans which includes a commitment to nondiscrimination and reasonable accommodations that is aligned with state and federal laws. For these reasons the agency declines to make the requested changes, and hereby adopts the repeal of the rule with no changes.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code, the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education re-

quirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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SUBCHAPTER B. RULES OF PRACTICE

22 TAC §§801.41 - 801.48, 801.50, 801.53 - 801.58

The Texas Behavioral Health Executive Council adopts new §§801.41 - 801.48, 801.50, and 801.53 - 801.58, relating to Rules of Practice. Sections 801.41, 801.42, 801.45, 801.46, 801.48, 801.50, and 801.54 - 801.57 are adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4668) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, and comments received from the public, §§801.43, 801.44, 801.47, 801.53, and 801.58 are being changed and adopted as republished below.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The new rules pertain to the scope of practice, standards of care, and ethical practice for marriage and family therapists; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter requested the prohibitions against the use of drugs and alcohol in the practice of marriage and family therapy be moved from rule §801.44 to §801.47.

A commenter requested rule §801.58 be amended to remove the requirement that a licensee provide a physical location of practice.

List of interested groups or associations for the rule.

Texas Counseling Association - rule §801.58

Summary of comments for the rule.

Commenters stated their support for reducing the amount of initial hours of education required to initially provide technology assisted services from 15 hours to 8 hours in rule §801.58.

Agency Response.

The agency agrees in part and declines in part to amend rule §801.44 as requested by the commenter. The portion of the rule pertaining to drugs and alcohol, §801.44(s), has been moved to §801.47, where organizationally it makes sense. But §801.44(w) has been amended in response to the Office of the Governor's recommendations and it no longer pertains to drugs or alcohol, so reorganizing it to §801.47 no longer makes sense. For these reasons the agency agrees to make some of the requested changes, and hereby adopts the rule with changes.

The agency appreciates the commenters support for amendments to rule §801.58; the agency has amended this rule in response to the Office of the Governor's recommendations to reduce the required hours of education to initially provided technology assisted services to zero. The agency also agrees that removing the requirement to provide a physical location of practice makes sense, and notes that the business address associated with the license will be in the Council's database and available for public view. For these reasons the agency agrees to make some of the requested changes, and hereby adopts the rule with changes.

Statutory Authority.

The rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§801.43. Professional Representation.

(a) A licensee is subject to and bound by provisions of the Act, the Council Act, and council rules.

(b) A licensee that becomes aware of another licensee violating state or federal law within the jurisdiction of the Council, may attempt to resolve the violation informally with the other licensee if the violation does not involve actual or likely harm to an individual or the public. Any unresolved violations must be reported to the Council. A licensee that becomes aware of another licensee violating a state or federal law within the jurisdiction of the Council involving actual or likely harm to an individual or the public, must report the violation to the Council.

(c) When providing professional therapeutic services as defined in §801.42 of this title (relating to Professional Therapeutic Services), a licensee must indicate his or her licensure status as an LMFT or LMFT Associate, including any probationary status or other restrictions placed on the licensee by the council.

(d) A licensee may not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including:

(1) the effectiveness of services;

(2) the licensee's qualifications, capabilities, background, training, education, experience, professional affiliations, fees, products, or publications; or

(3) the practice of marriage and family therapy.

(e) A licensee may not misrepresent any agency or organization by presenting it as having attributes that it does not possess.

(f) A licensee may not encourage, or within the licensee's power, allow a client to hold exaggerated ideas about the efficacy of services provided by the licensee.

(g) If a licensee learns of a misrepresentation, exaggerated, false, deceptive, or fraudulent claim or statement made by another, the licensee must take reasonable action to correct the misrepresentation, claim or statement.

§801.44. Relationships with Clients.

(a) A licensee must provide marriage and family therapy professional services only in the context of a professional relationship.

(b) A licensee must make known in writing to a prospective client the important aspects of the professional relationship, including the licensee's status as an LMFT or LMFT Associate, any probationary status or other restrictions placed on the licensee by the council, office procedures, after-hours coverage, fees, and arrangements for payment (which might affect the client's decision to enter into the relationship).

(c) A licensee must obtain an appropriate consent for treatment before providing professional services. A licensee must make reasonable efforts to determine whether the conservatorship, guardianship, or parental rights of the client have been modified by a court. Before the commencement of therapy services to a minor client who is named in a custody agreement or court order, a licensee must obtain and review a current copy of the custody agreement or court order in a suit affecting the parent-child relationship. A licensee must maintain these documents in the client's record. When federal or state statutes provide an exemption to secure consent of a parent or guardian before providing services to a minor, such as in Texas Family Code, Chapter 32 (relating to Consent to Treatment of Child by Non-Parent or Child), a licensee must follow the protocol set forth in such federal or state statutes.

(d) A licensee must make known in writing to a prospective client the confidential nature of the client's disclosures and the clinical record, including the legal limitations of the confidentiality of the mental health record and information.

(e) No commission or rebate or any other form of remuneration may be given or received by a licensee for the referral of clients for professional services. A licensee employed or under contract with a chemical dependency facility or a mental health facility must comply with the requirements in Texas Health and Safety Code, §164.006 (relating to Soliciting and Contracting with Certain Referral Sources). Compliance with Texas Health and Safety Code, Chapter 164 (relating to Treatment Facilities Marketing and Admission Practices) is not considered a violation of state law regarding illegal remuneration.

(f) A licensee may not exploit the licensee's position of trust with a client or former client.

(g) A licensee may not engage in activities that seek to meet the licensee's personal needs instead of the needs of the client.

(h) A licensee may not provide marriage and family therapy services to family members, personal friends, educational associates, business associates, or others whose welfare might be jeopardized by such a dual relationship.

(i) A licensee must set and maintain professional boundaries with clients and former clients.

(j) A licensee may disclose confidential information to medical or law enforcement personnel if the licensee determines there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(k) In group therapy settings, the licensee must take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(l) A licensee must make a reasonable effort to avoid non-therapeutic relationships with clients or former clients. A non-therapeutic relationship is an activity begun by either the licensee, the client, or for-

mer client for the purposes of establishing a social, business, or other relationship not related to therapy. A licensee must ensure the welfare of the client or former client if a non-therapeutic relationship arises.

(m) A licensee may not bill clients or third parties for services not actually rendered or as agreed to in writing.

(n) A licensee must end a professional relationship when it is reasonably clear the client is not benefiting from it. Upon ending a professional relationship, if the client still requires mental health services, the licensee must make reasonable efforts to provide a written referral to clients for appropriate services and to facilitate the transfer to appropriate care.

(o) A licensee who engages in technology-assisted services must provide the client with the licensee's license number and information on how to contact the council by telephone, electronic communication, or mail. The licensee must comply with all other provisions of this chapter.

(p) A licensee may not offer services that are beyond the licensee's professional competency, and the services provided must be within accepted professional standards of practice and appropriate to the needs of the client.

(q) A licensee must base all services on an assessment, evaluation, or diagnosis of the client.

(r) A licensee must evaluate a client's progress on a continuing basis to guide service delivery and must make use of supervision and consultation as indicated by the client's needs.

(s) A licensee may not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee must take immediate and reasonable action to inform the other mental health services provider.

(t) A licensee may not aid or abet the unlicensed practice of marriage and family therapy services by a person required to be licensed under the Act. A licensee must report to the council knowledge of any unlicensed practice.

(u) A licensee may not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

(v) A licensee must refrain from providing services when they know or should know that their physical or mental health or lack of objectivity are likely to impair their competency or harm a client or other person with whom they have a professional relationship.

§801.47. Drug and Alcohol Use.

(a) A licensee may not use alcohol or drugs in a manner which adversely affects the licensee's ability to provide marriage and family therapy services.

(b) A licensee may not promote or encourage the illegal use of alcohol or drugs by a client.

§801.53. Advertising and Announcements.

(a) Information used by a licensee in any advertisement or announcement of services may not contain information which is false, misleading, deceptive, inaccurate, incomplete, out of context, or not readily verifiable. Advertising includes any announcement of services, letterhead, business cards, commercial products, and billing statements. Only the highest academic degree earned from an accredited college or university or only the highest academic degree earned at a foreign university that has been determined to be equivalent to a degree from an accredited institution or program by a member of the National Association of Credential Evaluation Services and relevant to the profession of therapy or a therapy-related field shall be used when advertising or announcing therapeutic services to the public or in therapy-related professional representations. A licensee may advertise or announce his or her other degrees or equivalent degrees earned at foreign institutions from accredited colleges or universities if the subject of the degree is specified.

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

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

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

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

(4) contains a testimonial that includes false, deceptive, or misleading statements, or fails to include disclaimers or warnings as to the credentials of the person making the testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required;

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

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

(c) The council imposes no restrictions on advertising by a licensee with regard to the use of any medium, the licensee's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee, or the use of a trade name. A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

(d) All advertisements or announcements of therapeutic services including telephone directory listings by a licensee must clearly state his or her license status by the use of a title such as "Licensed Marriage and Family Therapist," "LMFT," "Licensed Marriage and Family Therapist Associate," "LMFT Associate," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S," or "LMFT Supervisor."

(e) A licensee may not include in advertising or announcements any information or any reference to certification in a field outside of therapy or membership in any organization that may be confusing or misleading to the public as to the services or legal recognition of the licensee.

(f) An LMFT or LMFT Associate holding a provisional license must indicate the provisional status on all advertisements, billing,

and announcements of treatment by the use of the term "Provisional Licensed Marriage and Family Therapist" or "Provisional Licensed Marriage and Family Therapist Associate," as appropriate.

(g) If a licensee becomes aware of a misuse of licensee's license certificate or misrepresentation of a licensee's services or the results of licensee's services, the licensee must report the misuse or misrepresentation to the Council within 30 days of becoming aware of the misuse or misrepresentation.

§801.58. Technology-Assisted Services.

(a) Licensees who provide marriage and family therapy to clients or supervision to supervisees outside the State of Texas must comply with the laws and rules of Texas and of the out-of-state authority which govern the practice of marriage and family therapy.

(b) Licensees who provide treatment, consultation, and supervision using technology-assisted services must meet the same standards of appropriate practice as licensees who practice in traditional (i.e., in-person) settings.

(c) In accordance with Texas Occupations Code, §502.251 (relating to License Required), a person may not practice as a marriage and family therapist unless the person holds a license under this chapter or is exempt under Texas Occupations Code, §502.004 (relating to Application of Chapter)

(d) A licensee may provide technology-assisted services. To ensure the competent delivery of services by technology-assisted means, a licensee must maintain an appropriate level of education, training, or experience in using relevant technology. A licensee who provides technology assisted services must complete a minimum of two hours of continuing education in technology-assisted services every renewal period.

(e) A licensee may not render therapy using technology-assisted services without complying with the following at the onset of each session:

(1) fully verifying the location and identity of the client, to the most reasonable extent possible; and

(2) disclosing the identity of the licensee.

(f) Before providing technology-assisted services, a licensee must determine whether a client is a minor. Upon determining that a client is a minor, and before providing technology-assisted services, a licensee must obtain required consent from a parent or guardian and must verify the identity of the parent, guardian, or other person consenting to the minor's treatment.

(g) The licensee must determine if technology-assisted service is an appropriate delivery of treatment or supervision, considering the professional, intellectual, or emotional needs of the client or supervisee.

(h) Informed consent must include, at a minimum, information that defines electronic service delivery as practiced by the licensee and the potential risks and ethical considerations. The licensee must obtain and maintain written or electronic evidence documenting appropriate client informed consent for the use of technology-assisted services. The licensee must ensure that the informed consent complies with other informed consent requirements in this chapter and must include the following:

(1) identification of the client, the therapist, and the therapist's credentials;

(2) list of services provided by the licensee using technology-assisted services;

(3) client agreement that the therapist determines on an on-going basis whether the condition being assessed or treated is appropriate for technology-assisted services;

(4) details on security measures taken with the use of technology-assisted services, as well as potential risks to privacy notwithstanding such measures;

(5) information regarding secure protocols and back-up plans in case of technical failure;

(6) the licensee's credentials or training to engage in technology-assisted services, and contact information;

(7) risks and benefits of engaging in the use of technology;

(8) emergency procedures to follow when the therapist is not available;

(9) information collected and any passive tracking mechanisms used;

(10) third-party websites or services used by the licensee to facilitate technology-assisted services; and

(11) an explanation of how records are maintained electronically, including encryption type and record security, and the archival storage period for transaction records.

(i) Therapists who use technology-assisted services must meet or exceed applicable federal and state legal requirements of health information privacy, including compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191; The Health Information Technology for Economic and Clinical Health (HITECH) Act, 42 U.S.C. Chapter 156, Subchapter III; Texas Health and Safety Code, Chapter 181 (relating to Medical Records Privacy); and state privacy, confidentiality, and security rules.

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

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Texas State Board of Examiners of Marriage and Family Therapists
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SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS

22 TAC §§801.41 - 801.58

The Texas Behavioral Health Executive Council adopts the repeal of §§801.41 - 801.58, relating to Guidelines for Professional Therapeutic Services and Code of Ethics, without changes as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4666) and will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this addition of the *Texas Register.*

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior addition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

Texas Counseling Association - rule 801.49

Summary of comments against the rule.

Commenters were concerned that if rule 801.49 were repealed licensees would not be required to report certain things, such as criminal convictions or newly earned academic degrees, or be required to cooperate with disciplinary investigations or proceedings.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency declines to retain rule 801.49 as requested by the commenters. The Council adopted rules which do require licensees to report criminal convictions and cooperate with Council investigations. The Council can request a copy of a licensee's academic degree if it is needed or relevant to a Council proceeding. For these reasons the agency declines to make the requested changes, and hereby adopts the repeal of the rule with no changes.

Statutory Authority.

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in 507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with 502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by 502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with 507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in 2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §§801.71, 801.74 - 801.76, 801.112 - 801.115, 801.142, 801.143, 801.174, 801.202, 801.203, 801.263, 801.264, 801.266

The Texas Behavioral Health Executive Council adopts new §§801.71, 801.74 - 801.76, 801.112 - 801.115, 801.142, 801.143, 801.174, 801.202, 801.203, 801.263, 801.264, and 801.266, relating to applications and licensing. Sections 801.71, 801.74 - 801.76, 801.112 - 801.115, 801.143, 801.174, 801.202, 801.203, 801.263, 801.264, and 801.266 are adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4678) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §801.142 is being changed and adopted as republished below.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to

perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The new rules pertain to the qualifications necessary to obtain a license and continuing education requirements for marriage and family therapists; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter requested rule §801.114 be amended to reduce the direct contact hours requirement by the same proportional decrease as is being done in rule §801.142.

A commenter requested the following changes to rule §801.142; that one hour of weekly supervision be changed to four hours per month, that couples or family be defined by the client, and delete the 500 hour limitation for providing direct clinical services required for licensure.

List of interested groups or associations for the rule.

Texas Counseling Association - rules §§801.74, 801.142, and 801.263

Summary of comments for the rule.

Commenters thanked the agency for retaining rule §801.74 because they felt it was necessary for graduate student in their last semester of internship to be able to apply for approval to sit for licensing exams.

Commenters support the reduction in the amount of required hours an LMFT Associate must be providing direct clinical services to couples or families as part of their required supervised clinical experience under rule §801.142.

Commenters supported the change to rule §801.263 which allows half of the required continuing education hours to be obtained through a learning format that does not accommodate real-time interaction, such as self-study correspondence course or pre-recorded webinar.

Agency Response.

The agency declines to amend rule §801.114 as requested by the commenter. The direct contact hours the commenter is requesting changed will occur during an academic degree program. The agency believes further research and study, to support such a change, will be needed before such a change can or should be proposed and adopted. For these reasons the agency declines to make the requested changes, and hereby adopts the rule with no changes.

The agency declines to amend rule §801.142 as requested by the commenter. The rule currently includes "for good cause shown" which will allow a supervisor some flexibility when providing supervision, but the agency was concerned that allowing it on a monthly basis may result in supervisors meeting with supervisee less frequently, i.e. once per month, and the agency felt a minimum of once a week was important to ensure supervisees were competently providing services. The agency does not believe adding "as defined by the client" with regard to couples or family is necessary or helpful, the definitions rule, §801.2, already addresses such matters. Lastly, the agency believes some level of providing direct clinical services without technology is necessary to achieve competency for licensure, therefore the agency believe there needs to be a limitation placed on the amount of hours of technology assisted services that can be used for licensure purposes. For these reasons the agency declines to make the requested changes, and hereby adopts the rule with no changes.

The agency thanks the commenters for their support of rules §§801.74, 801.142, and 801.263.

Statutory Authority.

The rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§801.142. Supervised Clinical Experience Requirements and Conditions.

An applicant for LMFT must complete supervised clinical experience acceptable to the council.

(1) The LMFT Associate must have completed a minimum of two years of work experience in marriage and family therapy, which includes a minimum of 3,000 hours of supervised clinical practice. The required 3,000 must include:

(A) at least 1,500 hours providing direct clinical services, of which:

(i) no more than 500 hours may be provided via technology-assisted services (as approved by the supervisor); and

(ii) at least 500 hours must be providing direct clinical services to couples or families.

(B) of the 200 hours of council-approved supervision, as defined in §801.2 of this title (relating to Definitions), of which:

(i) at least 100 hours must be individual supervision; and

(ii) no more than 50 hours may be provided by telephonic services, but there is no limit for hours by lived video.

(2) The remaining required hours, not covered by subsection (1) above, may come from related experiences, including workshops, public relations, writing case notes, consulting with referral sources, etc.

(3) An LMFT Associate, when providing services, must receive a minimum of one hour of supervision every week, except for good cause shown.

(4) Staff may count graduate internship hours exceeding the requirements set in §801.114(b)(8) of this title (relating to Academic Course Content) toward the minimum requirement of at least 3,000 hours of supervised clinical practice under the following conditions.

(A) No more than 500 excess graduate internship hours, of which no more than 250 hours may be direct clinical services to couples or families, completed under a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(B) No more than 400 excess graduate internship hours, of which no more than 200 hours may be direct clinical services to couples or families, completed under a non-COAMFTE-accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(C) No more than 100 excess graduate internship supervision hours may be counted toward the minimum requirement of at least 200 hours of council-approved supervision.

(5) An LMFT Associate may practice marriage and family therapy in any setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(6) During the post-graduate, supervised clinical experience, both the supervisor and the LMFT Associate may have disciplinary actions taken against their licenses for violations of the Act, the Council Act, or council rules.

(7) Within 30 days of the initiation of supervision, an LMFT Associate must submit to the council a Supervisory Agreement Form for each council-approved supervisor.

(8) An LMFT Associate may have no more than two council-approved supervisors at a time, unless given prior approval by the council or its designee.

(9) Except as specified in paragraph (2) of this section, hours of supervision and supervised clinical experience accrued toward an out-of-state LMFT license may be accepted only by endorsement.

(A) The applicant must ensure supervision and supervised experience accrued in another jurisdiction is verified by the jurisdiction in which it occurred and that the other jurisdiction provides verification of supervision to the council.

(B) If an applicant has been licensed as an LMFT in another United States jurisdiction for the two years immediately preceding the date the application is received, the supervised clinical experience requirements are considered met. If licensed for any other two-year period, the application will be reviewed to determine whether clinical experience requirements have been met in accordance with council rules, 22 Texas Administrative Code, §882.1 (relating to Application Process).

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 305-7706

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SUBCHAPTER D. APPLICATION PROCEDURES

§§801.71 - 801.76

The Texas Behavioral Health Executive Council adopts the repeal of rules §§801.71 - 801.76, relating to Application Procedures, without changes as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4684) and will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this addition of the *Texas Register.*

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and §507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior addition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in

these rules, therefore, the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

A commenter is concerned that by repealing rule §801.73 applicants will not have to disclose whether or not they hold a license in another jurisdiction so the Board can find out if they have been sanctioned in another jurisdiction or not.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency declines to retain rule §801.73 as requested by the commenters. The Council adopted rules which do require applicants to submit a self-query report from the National Practitioner Data Bank, whereby past disciplinary history will be reported to the Council. For these reasons the agency declines to make the requested changes, and hereby adopts the repeal of the rule with no changes.

Statutory Authority.

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
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Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 305-7706

SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §§801.302, 801.303, 801.305

The Texas Behavioral Health Executive Council adopts new §§801.302, 801.303, and 801.305, relating to Schedule of Sanctions. Sections 801.302, 801.303, and 801.305 are adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4696) and will not be republished.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The new rules pertain to a schedule of sanctions for marriage and family therapists; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rules are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts these rules in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt these rules.

Lastly, the Executive Council adopts these rules under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Texas State Board of Examiners of Marriage and Family Therapists

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For further information, please call: (512) 305-7706

SUBCHAPTER E. CRITERIA FOR DETERMINING FITNESS OF APPLICANTS FOR EXAMINATION AND LICENSURE

22 TAC §§801.91 - 801.93

The Texas Behavioral Health Executive Council adopts the repeal of §§801.91 - 801.93, relating to Criteria for Determining Fitness of Applicants for Examination and Licensure, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4685). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register.*

Reasoned Justification

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorize the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

A commenter is concerned that by repealing §§801.91 - 801.93 the Board or Council will not have the ability to deny an applicant that is unfit for practice.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency declines to retain §§801.91 - 801.93 as requested by the commenter. Under the Council's rules if an applicant does not meet the standards listed in the rules then the application will be denied, the retention of these rules is not necessary for this purpose. Additionally, the Council has rules that require an applicant provide accurate information in the application, as well as provide information concerning any future disciplinary or legal actions; therefore the Council's rules have the same or similar requirements as listed in this repealed rules. For these reasons

the agency declines to make the requested changes, and hereby adopts the repeal of the rules with no changes.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code, the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 305-7706

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SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE

22 TAC §§801.111 - 801.115

The Texas Behavioral Health Executive Council adopts the repeal of rules §§801.111 - 801.115, relating to Academic Requirements for Examination and Licensure, without changes as published in the July 10, 2020 issue of the *Texas Register* (45 TexReg 4687) and will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register.*

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules. Therefore, the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 305-7706

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SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §§801.141 - 801.143

The Texas Behavioral Health Executive Council adopts the repeal of §§801.141 - 801.143, relating to Experience Requirements for Licensure, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4688). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register.*

Reasoned Justification

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorize the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
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Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 305-7706

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SUBCHAPTER H. EXAMINATIONS

22 TAC §801.171, §801.174

The Texas Behavioral Health Executive Council adopts the repeal of §801.171 and §801.174, relating to Examinations, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4689). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register.*

Reasoned Justification

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorize the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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SUBCHAPTER I. LICENSING

22 TAC §§801.201 - 801.205

The Texas Behavioral Health Executive Council adopts the repeal of rules §§801.201 - 801.205, relating to Licensing, without changes as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4691) and will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this addition of the *Texas Register.*

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well

as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules; therefore, the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

Texas Counseling Association - §801.201.

Summary of comments against the rule.

Commenters requested the 30 day timeframe for processing applications and duplicate license requests, contained in §801.201, either be retained or adopted in the Council's rules.

The agency declines to retain §801.201 as requested by the commenters. The Council's rules already establish application processing timeframes; and the Council's Compact with Texans also includes an application processing timeframe which the agency strives to process all applications within 30 days of receipt of all required documents. For these reasons the agency declines to make the requested changes and hereby adopts the repeal of the rule with no changes.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Statutory Authority.

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions, unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 September 15, 2020.

TRD-202003801
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 5, 2020
For further information, please call: (512) 305-7706

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SUBCHAPTER J. LICENSE RENEWAL, INACTIVE STATUS, AND SURRENDER OF LICENSE

22 TAC §§801.231 - 801.237

The Texas Behavioral Health Executive Council adopts the repeal of §§801.231 - 801.237, relating to License Renewal, Inactive Status, and Surrender of License, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4692). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register.*

Reasoned Justification

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

A commenter is concerned that if rule §801.234 is repealed the agency would not be able to grant the licensee additional time to complete continuing education requirements based on extraordinary circumstances, such as medical complications.

A commenter is concerned that if rule §801.236 is repealed a licensee returning to active status, from inactive status, and who previously had supervisory status may not know how to regain supervisory status.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency declines to retain §801.234 as requested by the commenter. The concern regarding the renewal deadline for a license is covered by the Council's rules, 22 TAC Ch. 883, and any such amendment or new rule regarding renewal deadlines must be promulgated by the Council. The Council consists of two Board Members from each member Board, therefore the Council may address this concern or other issues at future Council meetings. For these reasons the agency declines to make the requested changes, and hereby adopts the repeal of the rule with no changes.

The agency declines to retain §801.236 as requested by the commenter. The concern regarding the reactivation of a license is covered by the Council's rules, 22 TAC Ch. 882, and any such amendment or new rule regarding a licensee's status must be promulgated by the Council. The Council consists of two Board Members from each member Board, therefore the Council may address this concern or other issues at future Council meetings. For these reasons the agency declines to make the requested changes, and hereby adopts the repeal of the rule with no changes.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 September 15, 2020.

TRD-202003802
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: October 5, 2020
Proposal publication date: July 10, 2020
For further information, please call: (512) 305-7706

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SUBCHAPTER K. CONTINUING EDUCATION REQUIREMENTS

22 TAC §§801.261 - 801.264, 801.266, 801.268

The Texas Behavioral Health Executive Council adopts the repeal of §§801.261 - 801.264, 801.266, and 801.268, relating to Continuing Education Requirements, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4693). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register.*

Reasoned Justification

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 September 15, 2020.

TRD-202003803
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: October 5, 2020
Proposal publication date: July 10, 2020
For further information, please call: (512) 305-7706

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SUBCHAPTER L. COMPLAINTS AND VIOLATIONS

22 TAC §§801.291 - 801.304

The Texas Behavioral Health Executive Council adopts the repeal of §§801.291 - 801.304, relating to Complaints and Violations, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4695). The rules will not be republished.

Reasoned Justification

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

A commenter is concerned that if rule §801.304 is repealed the agency will not be able to take reciprocal discipline against a licensee who is sanction by another jurisdiction.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency declines to retain rule §801.304 as requested by the commenter. The Council's already allow for the agency to take reciprocal discipline against a licensee, see 22 TAC Ch. 884. For these reasons the agency declines to make the requested changes, and hereby adopts the repeal of the rule with no changes.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 September 15, 2020.

TRD-202003804
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: October 5, 2020
Proposal publication date: July 10, 2020
For further information, please call: (512) 305-7706

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SUBCHAPTER M. LICENSING OF PERSONS WITH CRIMINAL BACKGROUNDS

22 TAC §801.331, §801.332

The Texas Behavioral Health Executive Council adopts the repeal of §801.331 and §801.332, relating to Licensing Persons with Criminal Backgrounds, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4698). The rules will not be republished.

Reasoned Justification

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 September 15, 2020.

TRD-202003805
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: October 5, 2020
Proposal publication date: July 10, 2020
For further information, please call: (512) 305-7706

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SUBCHAPTER N. INFORMAL SETTLEMENT CONFERENCES

22 TAC §801.351

The Texas Behavioral Health Executive Council adopts the repeal of §801.351, relating to Informal Settlement Conferences, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4699). The rules will not be republished.

Reasoned Justification

The adopted repeal of this rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in this rule, therefore the repeal of this rule is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§801.351. Informal Settlement Conference.
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 September 15, 2020.

TRD-202003806
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: October 5, 2020
Proposal publication date: July 10, 2020
For further information, please call: (512) 305-7706

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SUBCHAPTER O. FORMAL HEARINGS

22 TAC §§801.361 - 801.364

The Texas Behavioral Health Executive Council adopts the repeal of §§801.361 - 801.364, relating to Formal Hearings, without changes to the text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4700). The rules will not be republished.

Reasoned Justification

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register,* which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 September 15, 2020.

TRD-202003807
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: October 5, 2020
Proposal publication date: July 10, 2020
For further information, please call: (512) 305-7706

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 98. TEXAS HIV MEDICATION PROGRAM

SUBCHAPTER C. TEXAS HIV MEDICATION PROGRAM

DIVISION 2. ADVISORY COMMITTEE

25 TAC §98.121

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts an amendment to §98.121, concerning the Texas HIV Medication Advisory Committee. The amendment to §98.121 is adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4702), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The Texas HIV Medication Advisory Committee is mandated under Texas Health and Safety Code, Chapter 85, Subchapter K and advises the Executive Commissioner and DSHS in the development of procedures and guidelines for the Texas HIV Medication Program. The program helps provide medications for the treatment of HIV and its related complications for low-income Texans.

The amendment avoids abolishment of the Texas HIV Medication Advisory Committee by August 1, 2020, as prescribed in the current rule and is necessary to extend the date of Texas HIV Medication Advisory Committee abolishment from August 1, 2020, to August 1, 2030.

The adoption 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). Section 98.121 has been reviewed and DSHS has determined that reasons for adopting the section continue to exist because a rule on this subject is required by statute.

COMMENTS

The 31-day comment period ended August 10, 2020.

During this period, DSHS did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, §85.003, which requires DSHS to act as lead agency and primary resource for AIDS and HIV policy; Texas Health and Safety Code, §85.016, which allows for the adoption of rules; Texas Health and Safety Code, §85.061, which establishes the Texas HIV Medication Program; Texas Health and Safety Code, §85.272, which establishes the Texas HIV Medication Advisory Committee and its duties; and 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 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 rule implements Texas Government Code, §2001.039.

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 September 15, 2020.

TRD-202003790
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: October 5, 2020
Proposal publication date: July 10, 2020
For further information, please call: (512) 206-5745

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER O. STATISTICAL PLANS

28 TAC §5.9502

The Commissioner of Insurance adopts new 28 TAC §5.9502, relating to the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks (statistical plan). The new section is adopted with changes to the proposed text as published in the June 19, 2020, issue of the *Texas Register* (45 TexReg 4157). The rule will be republished. TDI made nonsubstantive edits to the statistical plan in response to comments received. The statistical plan's edition name was changed to "First Edition, August 2020" to reflect that edits were made since the May 2020 version, and the proposed rule text was changed for consistency with this.

REASONED JUSTIFICATION. This adoption order changes the title of Subchapter O of 28 TAC Chapter 5 from "Texas Commercial Lines Statistical Plan" to "Statistical Plans" and adopts by reference a new statistical plan. The statistical plan will be published on TDI's website at www.tdi.texas.gov.

The rule is necessary to effectively implement Insurance Code Chapter 38, Subchapter E for statistical data collection in response to a catastrophe; standardize and streamline the catastrophe data reporting requirements to enhance efficiency and predictability for insurers and TDI; allow for better experience comparisons by TDI and the industry in general; ensure TDI has consistent, reliable information to evaluate the insurance market's health after a catastrophe; assist TDI in swiftly compiling complex data; allow for more timely analysis by TDI; and provide information about the impact of catastrophe events to policymakers.

Replacing numerous, distinct data calls with a single statistical plan for catastrophe data collection will ensure consistent, predictable, efficient data collection in the wake of a catastrophe. Implementing a single statistical plan for catastrophe data collection allows insurers to predict what data will be necessary and make business decisions about the most efficient way to report that data to avoid having to scramble during a catastrophe. The statistical plan describes the information responding insurers will provide to TDI following a catastrophe event.

This information is important to TDI's ability to evaluate the financial condition of insurers after a catastrophe and to ensure that consumers are protected. Standardized, high-quality, consistent data will result in better decision-making and more efficient solutions to determine the insurance market's health after a catastrophe. This rule will also decrease industry costs over time because it allows insurers to implement a predictable and streamlined catastrophe statistical plan and data reporting process. Associated costs represent mostly up-front costs to the insurer. Once the internal procedures are revised, an insurer will have a process in place, making future catastrophe data responses cost effective and efficient. Compared with the current one-time data call system, TDI anticipates that costs associated with catastrophe data reporting will decrease for insurers and TDI over time and will likely result in an overall reduction in costs.

Insurers, including surplus lines and farm mutual insurers, that write property or automobile insurance in Texas will report data under Insurance Code §38.001 under the statistical plan. Whether an insurer is required to report data for a catastrophe in a given year depends on the amount of Texas direct written premiums the insurer reported in the prior calendar year. This is different from previous data calls that required all insurers to report. TDI will use the premiums an insurer reported on its Annual Statement to determine whether that insurer is required to report. For an alien surplus lines insurer, TDI will use premiums provided by the Surplus Lines Stamping Office of Texas to make the determination. Insurers that are not licensed to write business in Texas or not eligible to do business in Texas on a surplus lines basis should not report data, even if the insurer has claims in Texas resulting from the catastrophe. Additionally, the statistical plan does not apply to captive insurers licensed under Insurance Code Chapter 964. Captive insurers were not

required to report under previous data calls, and they settle claims for themselves, so their exemption is consistent with previous catastrophe data call practices.

TDI will activate the statistical plan data reporting after a catastrophe in Texas. Insurers are not required to report data under the statistical plan until TDI has activated data reporting. TDI will activate reporting under Insurance Code §38.001 through a bulletin on TDI's website at www.tdi.texas.gov. The bulletin and statistical plan will provide instructions for responding insurers. These reports will be used to determine the financial impact of a catastrophe on insurers. A response made under Insurance Code §38.001 that is otherwise privileged or confidential by law, whether to a statistical agent or to TDI, remains privileged or confidential until introduced into evidence at an administrative hearing or in a court. Insurers should identify what documents are privileged or confidential in their responses.

New 28 TAC §5.9502 ensures that insurers use the new statistical plan. Previously, TDI would determine the data elements needed for each specific catastrophe event, which made requirements less predictable for insurers and meant that insurers had to program their systems to report the data after each event. This also meant that TDI received data of varying quality, requiring significant staff resources and time to clean up and organize. A statistical plan will simplify the reporting process, making reporting easier for insurers and analysis easier for TDI, which will produce more timely responses by TDI to assess the insurance market's health.

Insurance Code §38.204 and §38.207 give the Commissioner authority to adopt such a statistical plan. Additionally, under Insurance Code §38.001, TDI may address a reasonable inquiry to any insurance company or other holder of an authorization, such as a surplus lines or farm mutual insurer, about the business condition or matters TDI considers necessary for the public good or for the proper discharge of TDI's duties.

Section 5.9502(a) provides information about the rule's purpose and applicability. This subsection identifies which insurers must report under the statistical plan. This subsection also specifies that insurers are required to report their premium and loss experience after each catastrophe. This subsection is necessary to clarify the proposed rule's purpose and applicability.

Section 5.9502(b) provides information about notice to insurers if reporting under the statistical plan is activated for a specific catastrophe event. TDI will post notice under §38.001 through a bulletin on its website at www.tdi.texas.gov. This subsection is essential to notify insurers about the statistical plan activation process.

Section 5.9502(c) states that a response under §5.9502 must comply with the statistical plan. This subsection is essential to ensure that all responses comply with the statistical plan.

Section 5.9502(d) clarifies that if a submitted report is otherwise confidential by law, it will remain confidential as provided by Insurance Code §38.001(d). The rule specifies that insurers should identify which documents are privileged or confidential. This subsection is important to clarify that a response made under §38.001 that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court.

Section 5.9502(e) adopts the statistical plan by reference. The text of this subsection was revised from the text as proposed to adopt by reference the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks, First Edition, August 2020. This change is made to reflect that the version of the plan proposed to be adopted by reference has been revised in response to comments on the proposal.

The version of the statistical plan as adopted by reference under §5.9502(e) has been changed from the proposed version by:

- modifying the reporting requirements on page 14 of the statistical plan to require insurers to report the catastrophe name as a reported field; but companies do not need to enter it if they use the TDI reporting format where the change was made on Column B of the Licensed Insurers and Surplus Lines Insurers Tabs of the Excel Reporting Form template;

- making unknown ZIP codes standardized as "99999" on page 9 and 15 of the statistical plan and Column A of the Licensed Insurers and Surplus Lines Insurers Tabs of the Excel Reporting Form template;

- amending section 11F, now 11G, to state "without payment for each applicable ZIP code" on page 16 of the statistical plan; and

- adding clarification on the use of "all ZIP codes" to explain whether this phrase refers to only all listed ZIP codes on page 17 of the statistical plan.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from two commenters.

Commenter in support of the proposed rule, with no suggested changes: Underwriters at Lloyd's, London.

Commenter in support of the proposed rule, with suggested changes: Insurance Services Office, Inc.

Comment on the Statistical Plan: In regard to the statistical plan, a commenter recommends:

1) having a catastrophe code indicator as part of the reported fields;

2) making unknown ZIP codes standardized (i.e., as "00000" or "99999");

3) amending section 11F to state "without payment for each applicable ZIP code";

4) adding clarification on the use of "all ZIP codes" to explain whether this refers to only all listed ZIP codes; and

5) collecting the data as a text file instead of an Excel document to reduce the likelihood of companies altering the layout.

Agency Response: TDI agrees in part and disagrees in part with the comment.

In regard to having a catastrophe code indicator as part of the reported fields, TDI agrees to make a change, though different from what was requested. In the version of the statistical plan adopted by reference, the reporting form does not have a catastrophe code indicator but instead has a catastrophe name. TDI modified the form so that the catastrophe name shows up as a reported field, but companies do not need to enter it if they use the TDI reporting format.

TDI agrees to make unknown ZIP codes standardized as ""99999," amend section 11F as 11G and to state "without payment for each applicable ZIP code," and to add clarification on the use of "all ZIP codes" to explain whether this refers to only all listed ZIP codes. The version of the statistical plan adopted by reference includes these changes.

5) TDI does not agree that the data should be collected as a text file instead of an Excel document. A text file does not have built-in reasonability checks, which allow companies to see whether their submission will pass certain data checks. The Excel template is locked for editing and password protected. In addition, the statistical plan allows the statistical agent to establish alternate formats, including text files, while also allowing insurers to submit the Excel template. Therefore, TDI declines to make the requested change.

Comment on §5.9502: A commenter writes in support of the rule. The commenter commends TDI for publishing the statistical plan and stating the plan's expectations in advance of a catastrophe. The commenter expresses belief that this proposal will lead to standardized, high-quality, consistent data delivered in a more efficient process.

Agency Response: TDI appreciates the support and will continue to work to produce high-quality data in an efficient manner.

STATUTORY AUTHORITY. The Commissioner adopts new 28 TAC §5.9502 under Insurance Code §§38.001, 38.202, 38.204-38.207, and 36.001.

Insurance Code §38.001 authorizes TDI to address a reasonable inquiry to any insurance company or other holder of an authorization, such as a surplus lines or farm mutual insurer, relating to the business condition or any matter TDI considers necessary for the public good or for the proper discharge of TDI's duties. This section also specifies that a response made under this section that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court.

Insurance Code §38.202 allows the Commissioner to designate a statistical agent to gather data for relevant regulatory purposes or as otherwise provided by the Insurance Code.

Insurance Code §38.204 requires a designated statistical agent to collect data from reporting insurers under a statistical plan adopted by the Commissioner.

Insurance Code §38.205 provides that insurers must provide all premium and loss cost data to the Commissioner or designated statistical agent.

Insurance Code §38.206 authorizes the statistical agent to collect from reporting insurers any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurer.

Insurance Code §38.207 authorizes the Commissioner to adopt rules necessary to accomplish the purposes of Insurance Code Chapter 38, Subchapter E.

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.

§5.9502. Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks.

(a) Purpose and applicability.

(1) The purpose of this section is to establish requirements for the reporting of catastrophe-related data by insurers under Insurance Code Chapter 38, Subchapter E and Insurance Code §38.001.

(2) This section applies to all reports required to be filed under the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks for reporting dates beginning on or after the effective date of the plan. Insurers must report their claim and loss experience after each specified catastrophe event. Insurers are not required to report data under the statistical plan until TDI has activated the statistical plan for a specific event and requested information under Insurance Code §38.001 through a bulletin on TDI's website at www.tdi.texas.gov.

(b) Data reporting notice. TDI will notify insurers, including surplus lines and farm mutual insurers, of data reporting under the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks by posting a data request under Insurance Code §38.001 through a bulletin on TDI's website at www.tdi.texas.gov.

(c) Response requirements. A response must comply with the reporting requirements and instructions specified in the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks adopted by reference in subsection (e) of this section.

(d) Confidential information. Under Insurance Code §38.001(d), a response made under this section, whether to a statistical agent or to TDI, that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court. Insurers should identify what documents are privileged or confidential in their responses.

(e) Adoption by reference. The Commissioner adopts by reference the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks, First Edition, August 2020. This document is published by TDI and is available on TDI's website at www.tdi.texas.gov.

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 September 16, 2020.

TRD-202003822
James Person
General Counsel
Texas Department of Insurance
Effective date: October 6, 2020
Proposal publication date: June 19, 2020
For further information, please call: (512) 676-6587

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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

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

Chapters 129 - 137

The Texas Department of Insurance, Division of Workers' Compensation (DWC) will review all sections in 28 Texas Administrative Code Chapters 129 - 137. DWC will consider whether the initial reasons for adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments, as required under Texas Government Code §2001.039.

To comment on this rule review project, submit your written comments by 5:00 p.m., Central time, on October 22, 2020. Comments received after the comment period closes will not be considered.

Clearly specify the rule section your comment applies to and include proposed alternative language as appropriate. Designate general comments as such.

Email your comments to rulecomments@tdi.texas.gov or mail or deliver them to:

Cynthia Guillen

Legal Services, MS-4D

Texas Department of Insurance, Division of Workers' Compensation

7551 Metro Center Drive, Suite 100

Austin, Texas 78744-1645.

In future rulemaking, we may consider any suggested repeals or amendments identified during this rule review as provided by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

TRD-202003833
Kara Mace
Deputy Commissioner of Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Filed: September 16, 2020

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Texas Parks and Wildlife Department

Title 31, Part 2

NOTICE OF INTENT TO REVIEW RULES

The Texas Parks and Wildlife Department files this notice of intention to review the following chapters of 31 TAC, Part 2:

Chapter 53. Finance.

Subchapter A. Fees.

Subchapter B. Stamps.

Subchapter C. License Deputies and Vessel Registration Agents.

Subchapter D. Commercial Fishing Boat Numbers.

Subchapter E. Display of Boat Registration.

Subchapter F. Bonded Title for Vessels/Outboard Motors.

Subchapter G. Marine Dealers, Distributors, and Manufacturers. Subchapter H. License Standards.

Subchapter I. Combination and Super-Combination License Revenue Allocation.

Chapter 59. Parks.

Subchapter A. Park Entrance and Park User Fees.

Subchapter B. Local Park Planning Assistance.

Subchapter C. Acquisition and Development of Historic Sites, Buildings and Structures.

Subchapter D. Administration of the State Park System.

Subchapter E. Operation and Leasing of Parks Concessions.

Subchapter F. State Park Operational Rules.

Subchapter I. Gratuities.

Subchapter J. Off-Highway Vehicle Trail and Recreational Area Program

Chapter 69. Resource Protection.

Subchapter A. Endangered, Threatened, and Protected Native Plants. Subchapter B. Fish and Wildlife Values.

Subchapter C. Wildlife Rehabilitation Permits.

Subchapter D. Memorandum of Understanding.

Subchapter E. Natural Resource Damages.

Subchapter F. Health Certification of Native Shellfish.

Subchapter G. Compliance with Coastal Management Plan.

Subchapter H. Issuance of Marl, Sand, and Gravel Permits.

Subchapter I. Shell Dredging on the Texas Gulf Coast.

Subchapter J. Scientific, Educational, and Zoological Permits.

Subchapter K. Sale of Nongame Species.

This review is pursuant to Government Code, §2001.039. The department will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist. Final consideration of this rules review by the Parks and Wildlife Commission is scheduled for the commission meeting to be held in Austin, Texas on January 23, 2021.

Any questions or written comments pertaining to this notice of intent to review should be directed to Todd George, Assistant General Counsel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744. Any proposed changes to rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-202003935
Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
Filed: September 23, 2020

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §885.1(b)

Fees	Total Fee	Base	Texas.gov	OPP	eStrategy
APPLICATION FEES					
Social Workers					
LBSW or LMSW Application	$ 109.00	$ 100.00	$ 4.00	$ 5.00	
LCSW Application (LMSW-AP applications no longer accepted)	$ 129.00	$ 120.00	$ 4.00	$ 5.00	
Upgrade from LBSW to LMSW	$ 20.00	$ 20.00			
Upgrade from LMSW to [~~LMSW-AP/~~]LCSW	$ 20.00	$ 20.00			
Independent Practice Recognition	$ 20.00	$ 20.00			
Supervisor Status Application	$ 50.00	$ 50.00			
Temporary License Application	$ 30.00	$ 30.00			
Marriage and Family Therapists					
Initial LMFT Associate Application	$ 69.00	$ 60.00	$ 4.00	$ 5.00	
Initial Licensure Fee	$ 90.00	$ 90.00			
Upgrade from LMFT Associate to LMFT	$ 90.00	$ 90.00			
LMFT by Endorsement Application	$ 161.00	$ 150.00	$ 6.00	$ 5.00	
Supervisor Status Application	$ 50.00	$ 50.00			
Professional Counselors					
LPC Associate/LPC/Provisional License Application	$ 221.00	$ 210.00	$ 6.00	$ 5.00	
Supervisor Status Application	$ 50.00	$ 50.00			
Art Therapy Designation	$ 20.00	$ 20.00			
Psychologists/Psychological Associates/Specialists in School Psychology					
LPA Application	$ 325.00	$ 320.00		$ 5.00	
LP Application	$ 450.00	$ 445.00		$ 5.00	
LP License Issuance Fee	$ 381.00	$ 381.00			
LSSP Application	$ 280.00	$ 275.00		$ 5.00	
Temporary License Application	$ 100.00	$ 100.00			

Figure: 22 TAC §885.1(b)

RENEWAL FEES					
Social Workers					
LBSW/LMSW Renewal	$ 141.00	$ 135.00	$ 4.00	$ 2.00	
LMSW-AP/LCSW Renewal	$ 163.00	$ 155.00	$ 6.00	$ 2.00	
Additional Renewal Fee for Independent Practice Recognition	$ 20.00	$ 20.00			
Additional Renewal Fee for Supervisor Status	$ 50.00	$ 50.00			
Marriage and Family Therapists					
LMFT/LMFT Associate Renewal	$ 141.00	$ 135.00	$ 4.00	$ 2.00	
Additional Renewal Fee for Supervisor Status	$ 50.00	$ 50.00			
LMFT Associate Extension	$141.00 [~~136.00~~]	$ 135.00	$ 4.00	$ 2.00	
Professional Counselors					
LPC Renewal	$ 141.00	$ 135.00	$ 4.00	$ 2.00	
Additional Renewal Fee for Supervisor Status	$ 50.00	$ 50.00			
Psychologists/Psychological Associates/Specialists in School Psychology					
LPA Renewal	$ 238.00	$ 230.00	$ 6.00	$ 2.00	
LP Renewal	$ 424.00	$ 412.00	$ 10.00	$ 2.00	
LSSP Renewal	$ 141.00	$ 135.00	$ 4.00	$ 2.00	
Over 70 Renewal - Applicable only to licensees who turned 70 by 8/31/2020	$ 26.00	$ 20.00	$ 4.00	$ 2.00	
Additional Renewal Fee for HSP Designation	$ 40.00	$ 40.00			
EXAMINATION FEES					
-					
Social Workers					
Jurisprudence Exam	$ 39.00	$ 5.00	~~$ 5.00~~		$ 34.00
Marriage and Family Therapists					
Jurisprudence Exam	$ 39.00	$ 5.00	~~$ 5.00~~		$ 34.00

Figure: 22 TAC §885.1(b)

Professional Counselors					
Jurisprudence Exam	$ 39.00	$ 5.00	~~$ 5.00~~		$ 34.00
Psychologists/Psychological Associates/Specialists in School Psychology					
Jurisprudence Exam	$ 39.00	$ 5.00	~~$ 5.00~~		$ 34.00
MISCELLANEOUS FEES					
Duplicate Renewal Permit or License	$ 10.00				
Written Verification of Licensure	$ 10.00				
Written State to State Verification of Licensure	$ 50.00				
Mailing List	$ 10.00				
Returned Check Fee	$ 25.00				
Criminal History Evaluation	$ 150.00				
Reinstatement of License	$ 500.00				
Request for Inactive Status	$ 106.00	$ 100.00	$ 4.00	$ 2.00	
Inactive Status Renewal (biennial)	$ 106.00	$ 100.00	$ 4.00	$ 2.00	
Request to Reactivate License from Inactive Status	equal to current renewal fee				
Late fee for license expired 90 days or less	equal to 1.5 times the base renewal fee				
Late fee for license expired more than 90 days, but less than one year	equal to 2 times the base renewal fee				

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.

Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective October 1, 2020

The additional 1/2 percent sales and use tax for Property Tax Relief as permitted under Chapter 321 of the Texas Tax Code will be abolished effective September 30, 2020 and an additional 1/2 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be adopted effective October 1, 2020 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Gunter (Grayson Co)	2091073	.020000	.082500

A 1 percent special purpose district sales and use tax will become effective October 1, 2020 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Montgomery County Management District No. 1	5170843	.010000	SEE NOTE 1
Wood Trace Management District	5170834	.010000	SEE NOTE 2

A 1 1/2 percent special purpose district sales and use tax will become effective October 1, 2020 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Westside 211 Special Improvement District	5015708	.015000	SEE NOTE 3

A 2 percent special purpose district sales and use tax will become effective October 1, 2020 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Fort Bend County Assistance District No. 19	5079667	.020000	SEE NOTE 4
Fort Bend County Assistance District No. 22	5079676	.020000	SEE NOTE 5

NOTE 1: The Montgomery County Management District No. 1 is located in the southwest portion of Montgomery County. The district is located entirely within Montgomery County Emergency Services District No. 10, which imposes an SPD sales and use tax. The district excludes any cities and other SPDs. The unincorporated areas of Montgomery County in ZIP Code 77354 are partially located within Montgomery County Management District No. 1. Contact the district representative at 713-623-4531 for additional boundary information.

NOTE 2: The Wood Trace Management District is located in the southwest portion of Montgomery County. The district is located entirely within Montgomery County Emergency Services District No. 10, which imposes an SPD sales and use tax. The district excludes any cities or other SPDs. The unincorporated areas of Montgomery County in ZIP Codes 77354 and 77362 are partially located within Wood Trace Management District. Contact the district representative at 713-623-4531 for additional boundary information.

NOTE 3: The Westside 211 Special Improvement District is located in the eastern portion of Bexar County. The district is located entirely within the San Antonio MTA, which has a transit sales and use tax. The district excludes any area within the city of San Antonio or the Bexar County Emergency Services District No. 2. The unincorporated areas of Bexar County in ZIP Codes 78245 and 78254 are partially located within the Westside 211 Special Improvement District. Contact the district representative at 210-349-6484 for additional boundary information.

NOTE 4: The Fort Bend County Assistance District No. 19 is located in the east central portion of Fort Bend County. The district excludes the city of Orchard and any other cities or SPDs. The unincorporated areas of Fort

Bend County in ZIP Codes 77441, 77464, 77471 and 77485 are partially located within Fort Bend County Assistance District No. 19. Contact the district representative at 281-344-9400 for additional boundary information.

NOTE 5: The Fort Bend County Assistance District No. 22 is located in the east central portion of Fort Bend County. The district excludes the city of Stafford and any other cities or SPDs. The unincorporated areas of Fort Bend County in ZIP Codes 77459, 77477 and 77478 are partially located within Fort Bend County Assistance District No. 22. Contact the district representative at 713-934-3199 for additional boundary information.

TRD-202003863
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: September 18, 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, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/28/20 - 10/04/20 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 09/28/20 - 10/04/20 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/20 - 10/31/20 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/20 - 10/31/20 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.

TRD-202003896
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 22, 2020

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Texas State Board of Dental Examiners

Notice of Stakeholder Meeting October 5, 2020

At the September 11, 2020, meeting of the Texas State Board of Dental Examiners (Board), Board staff was directed to initiate possible rulemakings for the topic below. This stakeholder meeting will convene on October 5, 2020, via Zoom.

The Board requests stakeholder input on the following topic related to possible rulemaking proceedings:

Benzodiazepine doses, specifically what is acceptable for in office and out of office administration, and existing provisions of the Dental Practice Act and Board rules.

Staff will convene a stakeholder meeting to seek stakeholder input regarding this topic on **Monday, October 5, at 10:00 a.m.** The physical location of the meeting is William P. Hobby Jr. State Office Building, Tower III, Room 102, at 333 Guadalupe Street, Austin, Texas, 78701. Stakeholders will only be allowed to participate via Zoom.

Staff will post details on the Board's website closer to the meeting date on how to participate via Zoom and submit comments. The details will be posted here: https://tsbde.texas.gov/board-and-committees/

Stakeholders may submit informal input by mail to the Board's General Counsel at 333 Guadalupe Street, Suite 3-800, Austin, Texas, 78701, by fax to (512) 649-2482, or by email to stakeholders@tsbde.texas.gov. Information regarding Board proceedings and the laws and rules related to dentistry are available at www.tsbde.texas.gov.

Persons who have special communication or other accommodation needs who are planning to attend the stakeholder meeting should contact executive assistant Wendy Richardson, at wrichardson@tsbde.texas.gov or (512) 305-9332. Arrangements should be made as far in advance as possible.

TRD-202003905
Lauren Studdard
General Counsel
State Board of Dental Examiners
Filed: September 22, 2020

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Texas Education Agency

Notice of Correction Concerning the 2021-2022 Nita M. Lowey 21st Century Community Learning Centers, Cycle 11, Year 1 Grant Program under Request for Applications (RFA) #701-21-102

Filing Authority. The availability of grant funds is authorized by Public Law 114-95, Elementary and Secondary Education Act of 1965, as amended by Every Student Succeeds Act, Title IV, Part B (20 U.S.C. §§7171-7176).

The Texas Education Agency (TEA) published Request for Applications Concerning the 2021-2022 Nita M. Lowey 21st Century Community Learning Centers, Cycle 11, Year 1 Grant Program in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6779). The TEA has delayed the posting of the grant opportunity at this time. The TEA will request competitive grant applications under RFA #701-21-102 at a future date.

Further Information. For clarifying information about the RFA, contact the Competitive Grant Unit, Grants Administration, at competitivegrants@tea.texas.gov.

TRD-202003936

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: September 23, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ 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 **November 2, 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 **November 2, 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: Blaine Larsen Farms, Incorporated; DOCKET NUMBER: 2020-0927-AIR-E; IDENTIFIER: RN109220137; LOCATION: Dalhart, Hartley County; TYPE OF FACILITY: power generation and distribution plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O3896, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O3896, GTC and Special Terms and Conditions Number 11, and THSC, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $9,188; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: City of Frost; DOCKET NUMBER: 2020-0396-PWS-E; IDENTIFIER: RN101390268; LOCATION: Frost, Navarro County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(e)(2), by failing to disinfect groundwater prior to distribution and storage and in a manner consistent with 30 TAC §290.110; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: $1,673; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Santa Rosa; DOCKET NUMBER: 2018-0993-WQ-E; IDENTIFIER: RN105573984; LOCATION: Santa Rosa, Cameron County; TYPE OF FACILITY: municipal small separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System General Permit for Small Municipal Separate Storm Sewer Systems; PENALTY: $21,250; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: City of Thorndale; DOCKET NUMBER: 2020-0720-MWD-E; IDENTIFIER: RN101607703; LOCATION: Thorndale, Milam 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 WQ0010302001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, by failing to comply with permitted effluent limitations; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2020-0777-AIR-E; IDENTIFIER: RN102323268; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: liquid petroleum gas processing plant; RULES VIOLATED: 30 TAC §101.201(b)(1)(J) and §122.143(4), Federal Operating Permit (FOP) Number O1641, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 5581, Special Conditions Number 1, FOP Number O1641, GTC and STC Number 19, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $8,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $3,200; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2020-0752-AIR-E; IDENTIFIER: RN100210665; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§115.722(c)(1), 116.115(c), and 122.143(4), New Source Review Permit Number 20289, Special Conditions Number 1, Federal Operating Permit Number O1339, General Terms and Conditions and Special Terms and Conditions Number 13, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions, and failing to limit highly reactive volatile organic compounds emissions to 1,200 pounds or less per one-hour block period; PENALTY: $12,075; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $4,830; ENFORCEMENT COORDINATOR: Danielle Porras, (713)

767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2020-0268-AIR-E; IDENTIFIER: RN100542844; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 83702, PSDTX843M2, PSDTX860M2, PAL15, and GHGPSDTX176, Special Conditions Number 1, Federal Operating Permit Number O2292, General Terms and Conditions and Special Terms and Conditions Number 25, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $13,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,250; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: GEO SPECIALTY CHEMICALS, INCORPORATED; DOCKET NUMBER: 2020-0285-PWS-E; IDENTIFIER: RN110910692; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water supply; 30 TAC §290.42(d)(1) and THSC, §341.0315(c), by failing to give all water secured from surface sources complete treatment at a plant which provides facilities for pretreatment disinfection, taste and odor control, continuous coagulation, sedimentation, filtration, covered clearwell storage, and terminal disinfection of the water with chlorine or suitable chlorine compounds; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.46(e)(6)(A), by failing to use at least one operator who holds a Class B or higher surface water license who, if used part-time, is completely familiar with the design and operation of the plant and spends at least four consecutive hours at the plant at least once every 14 days and the system also uses an operator who holds a Class C or higher surface water license; PENALTY: $4,355; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Gladieux Metals Recycling, LLC; DOCKET NUMBER: 2020-0943-AIR-E; IDENTIFIER: RN100210129; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: catalyst recovery plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O1337, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 1157C, Special Conditions Number 1, FOP Number O1337, GTC and STC Number 9, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,518; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Gregory Paul Mitchell dba Tire Recyclers of East Texas; DOCKET NUMBER: 2020-0512-MSW-E; IDENTIFIER: RN109229880; LOCATION: Hallsville, Harrison County; TYPE OF FACILITY: tire transporting and processing; RULES VIOLATED: 30 TAC §328.54(d), by failing to properly identify any vehicle or trailer used to transport used or scrap tires or tire pieces on both sides and the rear of the vehicle; and 30 TAC §328.55(5), by failing to submit a new registration application within 10 days of a change in ownership, or if a change in operations or management methods occurs such that the existing registration no longer adequately describes current operations or management methods at the facility; PENALTY: $8,750; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Harrisburg Water Supply Corporation; DOCKET NUMBER: 2020-0794-PWS-E; IDENTIFIER: RN101440360; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the executive director (ED) for the June 1, 2019 - November 30, 2019, monitoring period; 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2019 - December 31, 2019, monitoring period during which the copper action level was exceeded; and 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2019 - December 31, 2019, monitoring period during which the copper action level was exceeded; PENALTY: $1,350; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 676-7487; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: LAKE HILLS EXPRESS, INC dba Lakehills Ice House; DOCKET NUMBER: 2020-0337-PST-E; IDENTIFIER: RN101434264; LOCATION: Lakehills, Bandera County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or any associated late fees to TCEQ Financial Administration Account Number 90100099 for fiscal years 2009 through 2015; 30 TAC §334.72, by failing to report suspected releases of regulated substances within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: $11,276; ENFORCEMENT COORDINATOR: Tyler Smith, (512) 239-3421; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: LINDA'S SAND & GRAVEL, LLC; DOCKET NUMBER: 2020-0862-WQ-E; IDENTIFIER: RN109264341; LOCATION: El Campo, Wharton County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the aggregate production operation registration annually as regulated activities continued; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Midcoast G & P (North Texas) L.P. f/k/a Enbridge G & P (North Texas) L.P.; DOCKET NUMBER: 2019-0276-AIR-E; IDENTIFIER: RN105093512; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: oil and gas extraction; RULES VIOLATED: 30 TAC §122.143(4) and §122.147(a)(5)(A), Federal Operating Permit Number O2986, General Terms and Conditions and Special Terms and Conditions Number 7.A, and Texas Health and Safety Code, §382.085(b), by failing to comply with the fuel consumption limit; PENALTY: $11,475; ENFORCEMENT COORDINATOR:

Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Motiva Chemicals LLC; DOCKET NUMBER: 2020-0790-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing facility; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 16989 and PSDTX794, Special Conditions Number 1, Federal Operating Permit Number O1317, General Terms and Conditions and Special Terms and Conditions Numbers 24 and 28.A, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,387; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $2,955; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: Targa Midstream Services LLC; DOCKET NUMBER: 2020-0401-AIR-E; IDENTIFIER: RN100222900; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Numbers 5452 and 56431, Special Conditions Number 1, Federal Operating Permit Number O612, General Terms and Conditions and Special Terms and Conditions Number 20, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $50,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $25,000; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Targa Pipeline Mid-Continent WestTex LLC; DOCKET NUMBER: 2020-0747-AIR-E; IDENTIFIER: RN106726854; LOCATION: Big Lake, Reagan County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(c), 116.615(2), 116.620(a)(14), and 122.143(4), 40 Code of Federal Regulations §60.4245(d), Standard Permit Registration Number 148269, Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, Federal Operating Permit Number O4002/General Operating Permit Number 514, Site-wide Requirements Numbers (b)(9)(F)(ii) and (v), and Texas Health and Safety Code, §382.085(b), by failing to submit a copy of each performance test report within 60 days after the test has been completed; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(18) COMPANY: Texas Concrete Enterprise Ready Mix, Incorporated; DOCKET NUMBER: 2020-0693-AIR-E; IDENTIFIER: RN108799628; LOCATION: Houston, Harris County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(B)(i) and §116.615(5)(A), Standard Permit Registration Number 150603, General Conditions (GC) Number (5), and Texas Health and Safety Code (THSC), §382.085(b), by failing to provide a start-up notification; 30 TAC §116.115(b)(2)(E)(i) and §116.615(8), Standard Permit Registration Number 150603, GC Number (8), Amendments to the Air Quality Standard Permit for Concrete Batch Plants, Special Conditions (SC) Number (3)(J)(vii), and THSC, §382.085(b), by failing to maintain records for the stockpile dust suppression; and 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 150603, GC Number (2), Amendments to the Air Quality Standard Permit for Concrete Batch Plants, SC Numbers (9)(D)(ii) and (E)(iii), and THSC, §382.085(b), by failing to comply with the standard permit representations; PENALTY: $3,663; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202003881
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 22, 2020

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Amended Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Numbers 162359 and 162395

APPLICATION. Lauren Concrete Inc, 2001 Picadilly Drive, Round Rock, Texas 78664-9511 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 Numbers 162359 and 162395 to authorize the operation of two permanent concrete batch plants. The facility is proposed to be located approximately 0.25 mile north of Chandler Road on the west side of County Road 366, Taylor, Williamson County, Texas 76574. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. 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=30.611194&lng=-97.462994&zoom=13&type=r. This application was submitted to the TCEQ on August 10, 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 September 3, 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:

Monday, October 21, 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 276-110235. 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, (631) 992-3221 and enter access code 422-547-616.

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 Austin Regional Office, located at 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753-1808, 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 informaciòn en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Lauren Concrete, Inc., 2001 Picadilly Drive, Round Rock, Texas 78664-9511, or by calling Mr. Paul W. Henry, P.E., Henry Environmental Services at (512) 281-6555.

Amended Notice Issuance Date: September 10, 2020

TRD-202003921
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 22, 2020

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Enforcement Orders

An agreed order was adopted regarding Billy R. Hamrick, Docket No. 2017-0960-MSW-E on September 22, 2020 assessing $1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, 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 LAM DAO LLC dba A & D Discount, Docket No. 2018-0931-PST-E on September 22, 2020 assessing $6,563 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, 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 BK Express Inc, Docket No. 2019-0889-PWS-E on September 22, 2020 assessing $1,993 in administrative penalties with $398 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 Paul A. Worlow, Jr. dba Chisholm Trail Mobile Home Park, Docket No. 2019-1384-PWS-E on September 22, 2020 assessing $1,032 in administrative penalties with $206 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, 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 Nerro Supply, LLC, Docket No. 2019-1466-MWD-E on September 22, 2020 assessing $3,564 in administrative penalties with $712 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, 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 Corp., Docket No. 2019-1481-PST-E on September 22, 2020 assessing $5,671 in administrative penalties with $1,134 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, 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 K&N MANAGEMENT dba Rudy's Country Store & BBQ, Docket No. 2019-1545-PST-E on September 22, 2020 assessing $6,708 in administrative penalties with $1,341 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 Aqua Utilities, Inc., Docket No. 2019-1597-PWS-E on September 22, 2020 assessing $1,526 in administrative penalties with $305 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 Sherek Enterprises LLC dba Bills Corner, Docket No. 2019-1676-PST-E on September 22, 2020 assessing $2,560 in administrative penalties with $512 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, 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 Soren Strategies LLC, LEG Transport LLC, and House Hahl Commercial Owners Association, Inc., Docket No. 2019-1756-MWD-E on September 22, 2020 assessing $7,000 in administrative penalties with $1,400 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, 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 Liberty Utilities (Woodmark Sewer) Corp., Docket No. 2019-1800-MWD-E on September 22, 2020 assessing $5,000 in administrative penalties with $1,000 deferred. In-

formation concerning any aspect of this order may be obtained by contacting Harley Hobson, 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 Victoria County Water Control and Improvement District No. 2, Docket No. 2020-0014-PWS-E on September 22, 2020 assessing $3,021 in administrative penalties with $604 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, 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 SOUTHEAST OIL COMPANY dba Sealy Shell, Docket No. 2020-0227-PST-E on September 22, 2020 assessing $5,397 in administrative penalties with $1,079 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, 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 Loy Morris Sonmor Jr., Docket No. 2020-0269-WOC-E on September 22, 2020 assessing $1,510 in administrative penalties with $302 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, 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 Braskem America, Inc., Docket No. 2020-0271-AIR-E on September 22, 2020 assessing $5,560 in administrative penalties with $1,112 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, 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 Daingerfield, Docket No. 2020-0361-MWD-E on September 22, 2020 assessing $4,875 in administrative penalties with $975 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, 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 Midland City Center LLC, Docket No. 2020-0391-PST-E on September 22, 2020 assessing $3,562 in administrative penalties with $712 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, 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 LaBarge Realty, LLC, Docket No. 2020-0422-PWS-E on September 22, 2020 assessing $1,063 in administrative penalties with $212 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 BASF Corporation, Docket No. 2020-0434-AIR-E on September 22, 2020 assessing $3,560 in administrative penalties with $712 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle 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 Baylor College of Medicine, Docket No. 2020-0436-AIR-E on September 22, 2020 assessing $2,813 in administrative penalties with $562 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 Chevron U.S.A. Inc., Docket No. 2020-0450-AIR-E on September 22, 2020 assessing $1,175 in administrative penalties with $235 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, 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 DELISIAS 4 INC., Docket No. 2020-0477-PST-E on September 22, 2020 assessing $4,997 in administrative penalties with $999 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, 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 Frontier Feedlot Dublin, LLC, Docket No. 2020-0504-AGR-E on September 22, 2020 assessing $813 in administrative penalties with $162 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 John C. Rothermel, Docket No. 2020-0510-WOC-E on September 22, 2020 assessing $762 in administrative penalties with $152 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, 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 East Tawakoni, Docket No. 2020-0531-PWS-E on September 22, 2020 assessing $1,754 in administrative penalties with $1,052 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 Targa Midstream Services LLC, Docket No. 2020-0538-AIR-E on September 22, 2020 assessing $6,375 in administrative penalties with $1,275 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, 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 El Paso County, Docket No. 2020-0555-PWS-E on September 22, 2020 assessing $713 in administrative penalties with $142 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, 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 Lower Colorado River Authority, Docket No. 2020-0559-AIR-E on September 22, 2020 assessing $2,813 in administrative penalties with $562 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 North Orange Water & Sewer, LLC, Docket No. 2020-0567-PWS-E on September 22, 2020 assessing $840 in administrative penalties with $168 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Ben Brooks, Docket No. 2020-0637-OSS-E on September 22, 2020 assessing $175 in administrative penalties. Information concerning any aspect of this citation 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.

A field citation was adopted regarding City of Lago Vista, Docket No. 2020-0639-WQ-E on September 22, 2020 assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202003934
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 23, 2020

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Notice of a Proposed Renewal With Amendment of General Permit TXG130000 Authorizing the Discharge of Wastewater

The Texas Commission on Environmental Quality (TCEQ or commission) is proposing to renew and amend Texas Pollutant Discharge Elimination System General Permit TXG130000. This general permit authorizes discharges into or adjacent to water in the state from aquaculture facilities and other activities related to aquaculture. The draft general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

DRAFT GENERAL PERMIT. The executive director has prepared a draft general permit renewal with amendments of an existing general permit that authorizes discharges into or adjacent to water in the state from aquaculture facilities and other activities related to aquaculture. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The executive director proposes to require certain dischargers to submit a Notice of Intent to obtain authorization to discharge.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to General Land Office regulations and has determined that the action is consistent with applicable CMP goals and policies.

On the date that this notice is published, a copy of the draft general permit and fact sheet will be available for a minimum of 30 days for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ Austin office, at 12100 Park 35 Circle, Building F. These documents will also be available at the TCEQ's 16 regional offices and on the TCEQ website at *https://www.tceq.texas.gov/permitting/wastewater/general/index.html.* Alternately, you may request a copy of the draft general permit and fact sheet by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team MC-105, P.O. Box 13087, Austin, Texas 78711.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this draft general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the draft general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the draft general permit or if requested by a state legislator. A public meeting is not a contested case hearing.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at *https://www14.tceq.texas.gov/epic/eComment/* within 30 days from the date this notice is published.

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comment in making its decision and will either adopt the executive director's response or prepare its own response. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin office. A notice of the commissioners' action on the draft general permit and a copy of its response to comments will be mailed to each person who submitted a comment. Also, a notice of the commission's action on the draft general permit and the text of its response to comments will be published in the *Texas Register.*

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the TCEQ Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at: *https://www.tceq.texas.gov.*

Further information may also be obtained by calling Laurie Fleet, TCEQ Water Quality Division, at (512) 239-5445.

Si desea información en español, puede llamar al (800) 687-4040.

TRD-202003886
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 22, 2020

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 43036

Application. Terrabella Environmental Services, Inc., P.O. Box 39, Leming, Texas 78050, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 43036, to construct and operate a Type V liquid waste transfer station. The proposed facility, Terrabella Environmental Services Pleasanton, will be located 433 Zander Lane, Pleasanton, Texas 78064, in Atascosa County. The Applicant is requesting authorization to transfer municipal solid waste that includes formalin and water, unused and/or expired IV bags, and non-hazardous, non-industrial liquids and solid waste from municipal sources. The registration application is available for viewing and copying at the Pleasanton Public Library at 115 North Main Street, Pleasanton, Texas 78064, and may be viewed online at https://www.qnadiversified.com/permits. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://tceq.maps.ar-

cgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-98.441789%2C28.982765&level=12. For exact location, refer to the application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at <www.tceq.texas.gov/goto/cid>. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at <www14.tceq.texas.gov/epic/eComment/> 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. 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. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, <www.tceq.texas.gov/goto/pep>. General information regarding the TCEQ can be found on our website at <www.tceq.texas.gov/>. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Terrabella Environmental Services, Inc. at the address stated above or by calling Mr. Michael D. Carr at (210) 892-4496.

TRD-202003918
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 22, 2020

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Notice of Correction to Agreed Order Number 20

In the July 24, 2020, issue of the *Texas Register* (45 TexReg 5224), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 20, for Willhelm, Clovis C, Docket Number 2020-0561-WQ-E. The error is as submitted by the commission.

The reference to the Docket Number should be corrected to read: "2020-0561-WOC-E."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202003882
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 22, 2020

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Notice of District Petition: TCEQ Internal Control No. D-04092020-024

Notice issued September 9, 2020

Bonzo, LP, a Texas limited partnership with general partners Sonbeta LLC, a Texas limited liability Company and Four Seasons Land and Development, LLC, a Texas limited liability company filed a petition for creation of Rancho del Cielo Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). 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 in the proposed District and is owner of a majority in value of the Land; (2) there is no lienholder on the land in the proposed District; (3) the proposed District will contain approximately 198.487 acres located within Williamson County, Texas; and (4) no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The petition further states that the general nature of the work proposed to be done by the District, as contemplated at the present time, is the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement, extension, financing, and issuance of bonds for: (i) a water works and sanitary sewer system for domestic and commercial purposes; (ii) works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District; (iii) park and recreational facilities; and (iv) such other additional facilities, systems, plants and enterprises are consistent with all of 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 Petitioners, from the information available at this time, that the cost of said project will be approximately $27,500,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website 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 website, 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 website at www.tceq.state.tx.us.

TRD-202003917
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 22, 2020

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Notice of District Resolution: TCEQ Internal Control No. D-06172020-032

Notice issued September 9, 2020

Rockwall County Water Control and Improvement District No. 1 (the District), filed a resolution for conversion of the District to a Municipal Utility District (MUD) with the Texas Commission on Environmental Quality (TCEQ). The resolution was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; and the procedural rules of the TCEQ. The District contains approximately 616.21 acres of land within Rockwall County. A copy of the District's site map is available for public review upon request at either the District's office or at the TCEQ's office. According to the District's resolution contained in the application, Rockwall County Water Control and Improvement District No. 1 was created by the TCEQ. The District operates under Chapters 49 and 51 of the Texas Water Code. The District's resolution further states that the notice of the District's intent to conduct a hearing on conversion was published in the *Herald-Banner* for two consecutive weeks pursuant to the Texas Water Code §§54.030 and 54.032. The hearing for conversion was conducted on April 28, 2020, and entered in the minutes pursuant to the Texas Water Code §§54.030(b) and (d). After the hearing, having determined that conversion into a MUD would serve the best interest of the District and would be a benefit to the land and property included in the District, the resolution for conversion was adopted. The resolution also requests the District to be renamed River Rock Trails MUD No. 1 after the conversion.

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 https://www.tceq.texas.gov.

TRD-202003924
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 22, 2020

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Notice of District Resolution: TCEQ Internal Control No. D-06172020-033

Notice issued September 9, 2020

Rockwall County Water Control and Improvement District No. 2 (the District), filed a resolution for conversion of the District to a Municipal Utility District (MUD) with the Texas Commission on Environmental Quality (TCEQ). The resolution was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; and the procedural rules of the TCEQ. The District contains approximately 619.51 acres of land within Rockwall County. A copy of the District's site map is available for public review upon request at either the District's office or at the TCEQ's office. Accord-

ing to the District's resolution contained in the application, Rockwall County Water Control and Improvement District No. 2 was created by the TCEQ. The District operates under Chapters 49 and 51 of the Texas Water Code. The District's resolution further states that the notice of the District's intent to conduct a hearing on conversion was published in the *Herald-Banner* for two consecutive weeks pursuant to the Texas Water Code §§54.030 and 54.032. The hearing for conversion was conducted on April 28, 2020, and entered in the minutes pursuant to the Texas Water Code §§54.030(b) and (d). After the hearing, having determined that conversion into a MUD would serve the best interest of the District and would be a benefit to the land and property included in the District, the resolution for conversion was adopted. The resolution also requests the District to be renamed River Rock Trails MUD No. 2 after the conversion.

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 https://www.tceq.texas.gov.

TRD-202003926
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 22, 2020

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Notice of Hearing: Eric Sosa; SOAH Docket No. 582-21-0136; TCEQ Docket No. 2020-1066-LIC

APPLICATION.

Eric Sosa, 537 West Hammond, Fort Worth, Texas 76115-2525, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Operator License. The Executive Director denied Mr. Sosa's application for cause. Mr. Sosa has requested a formal hearing on the Executive Director's decision. During the review of Mr. Sosa's application, the Executive Director discovered that Mr. Sosa was convicted of three Class A Misdemeanors in 2001 and 2002, a State Jail Felony in 2001, and a Third-Degree Felony in 2003. Mr. Sosa also received deferred adjudication for Second Degree Felonies in 2002, 2012; two Third Degree Felonies in 2012. The Executive Director denied Mr. Sosa's application because he considers him to have been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing on this application at:

10:00 a.m. -- October 29, 2020

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Sosa should be issued a Water Operator License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Eric Sosa fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. General information about SOAH can be found on its website at www.soah.texas.gov/index.asp, or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilingsor sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be

filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

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."

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: September 22, 2020

TRD-202003920
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 22, 2020

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Notice of Hearing: Joshua Hahn; SOAH Docket No. 582-21-0144; TCEQ Docket No. 2020-1079-LIC

APPLICATION.

Joshua Hahn, P.O. Box 279, Spring, Texas 77383-0279, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water C License. The Executive Director denied Mr. Hahn's application for cause. Mr. Hahn has requested a formal hearing on the Executive Director's decision. During the review of Mr. Hahn's application, the Executive Director discovered that Mr. Hahn was convicted of a Second-Degree Felony in 2019. The Executive Director denied Mr. Hahn's application because this citation was for an offense that directly relates to the duties and responsibilities of the licensed occupation.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing on this application at:

10:00 a.m. - November 5, 2020

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Hahn should be issued a Water C License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Joshua Hahn fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our website at *www.tceq.texas.gov.* General information about SOAH can be found on its website at *www.soah.texas.gov/index.asp,* or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at*www.tceq.texas.gov/goto/efilings* **or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

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."**

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: September 22, 2020

TRD-202003925
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 22, 2020

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Notice of Hearing: Trey Smith; SOAH Docket No. 582-21-0143; TCEQ Docket No. 2020-1078-LIC

APPLICATION.

Trey Smith, 806 Perkins Street, San Marcos, Texas 78666-3208, has applied to the Texas Commission on Environmental Quality (TCEQ) for an On Site Sewage Facility Installer License. The Executive Director denied Mr. Smith's application for cause. Mr. Smith has requested a formal hearing on the Executive Director's decision. During the review of Mr. Smith's application, the Executive Director discovered that Mr. Smith was convicted of a Second-Degree Felony and a State Jail Felony. The Executive Director denied Mr. Smith's application because these felonies were for offenses that directly relate to the duties and responsibilities of the licensed occupation.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing on this application at:

10:00 a.m. - October 27, 2020

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Smith should be issued a On Site Sewage Facility Installer License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Trey Smith fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. General information about SOAH can be found on its website at www.soah.texas.gov/index.asp, or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings **or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

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."**

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: September 22, 2020

TRD-202003927
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 22, 2020

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Notice of Public Hearings and Opportunity for Comment on the Edwards Aquifer Protection Program

The Texas Commission on Environmental Quality (TCEQ or commission) conducts annual public hearings to receive comments from the public on actions the commission should take to protect the Edwards Aquifer from pollution, as required under Texas Water Code, §26.046. These annual public hearings are held by the Edwards Aquifer Protection Program and cover the TCEQ rules, found at Title 30, Texas Administrative Code, Chapter 213, which regulate development over the delineated contributing, recharge and transition zones of the Edwards Aquifer. These annual public hearings assist the commission in its shared responsibility with local governments, such as cities, counties and groundwater conservation districts, to protect the water quality of the aquifer. The TCEQ is specifically seeking feedback on the following topics related to the Edwards Aquifer Protection Program: 1) review of innovative technology applications; 2) regulation of aggregate production operations (APOs) located over the Edwards Aquifer; and 3) input on compliance monitoring of best management practices following installation.

On March 16, 2020, in accordance with Texas Government Code, §418.016, Governor Abbott suspended various provisions of the Open Meetings Act that require government officials and members of the public to be physically present at a specified hearing location. Pursuant to that suspension, the public will not be able to attend the hearing in person but may attend via Microsoft Teams application at no cost.

Unlike previous years in which TCEQ held two in-person hearings in Regions 11 and 13, this year the two hearings will be conducted as a **SINGLE** virtual hearing. The hearing will be held on **Monday, October 26, 2020 at 9:00 a.m. via Microsoft Teams Live Event** at: ***https://teams.microsoft.com/l/meetup-join/19%3ameeting_Yjk0NGI2NzUtYTk1Yi00ZGRlLTgxOTQtNTE2YmM4ZGNjNjZm%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%228e246f97-ba22-4192-88a3-75f53ecddbe5%22%2c%22IsBroadcastMeeting%22%3atrue%7d.***

Closed captions will be available. The public may also listen to the hearing by calling (512) 826-8070, conference ID no. 872-912-902#. Additionally, members of the public may view a recording of the hearing at a later date on the TCEQ YouTube Channel at:

https://youtu.be/s7Jrf9rufA4.

This hearing will be structured for the receipt of written comments only, via email to *eapp@tceq.texas.gov,* by interested persons and recognized as received by Agency staff. There will be no open question and answer discussion during the hearing. Agency staff members will be available to answer questions via email to the contact information below or phone call to the Edwards Aquifer Protection Program Liaison at (512) 239-1336, 30 minutes prior to and 30 minutes after the conclusion of the hearing. All other comments must be received by

5:00 p.m., October 30, 2020. Registration will be automatically generated by joining the hearing.

Additional written comments submitted before or after the hearing should reference the Edwards Aquifer Protection Program and may be sent to Ms. Anne Ruthstrom, Texas Commission on Environmental Quality, Program Support Section, MC 174, P.O. Box 13087, Austin, Texas 78711-3087, faxed to (512) 239-2249, or emailed to *eapp@tceq.texas.gov.* For further information or questions concerning these hearings, please contact Ms. Ruthstrom, or visit: ***https://www.tceq.texas.gov/permitting/eapp/history.html.***

TRD-202003880
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 22, 2020

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Notice of Water Rights Application: Application No. 13241A

Notice issued September 18, 2020

KM Liquids Terminals LLC, 300 Beltway Green Boulevard, Pasadena, Texas 77503, Applicant, requests to amend WRPERM No. 13241 to increase the authorized maximum combined diversion rate to 4.46 (2,001 gpm) for industrial purposes in Harris County, San Jacinto Basin. The application and fees were received on June 28, 2018. Additional information and fees were received on August 23, and October 3, 4, 5, and 29, 2018. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on November 8, 2018. The Executive Director completed the technical review of the application and prepared a draft amendment to the Water Use Permit. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice.

To view the complete issued notice, view the notice on our website 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 website, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. 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) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns.

Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting 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 Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202003923
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 22, 2020

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Texas Ethics Commission

List of Late Filers

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 in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Monthly Report due May 5, 2019 for Committees

Samantha Stinnett, Texas Association of Nurse Anesthetists Political Action Committee, 919 Congress Ave. Ste. 720, Austin, Texas 78701

Deadline: 8-Day Pre-election Report due October 28, 2019 for Committees

Calvin R. Jenkins II, Alvarado ISD Bond Election, P.O. Box 1874, Alvarado, Texas 76009-1874

Deadline: Semiannual Report due January 15, 2020 for Committees

Robert Coleman, Pflugerville Residents for Responsible Taxation, 425 Walnut St. Ste. 2600, Cincinnati, Ohio 45202-3930

Amber Dean, Securing Our Future, 8004 Wayne Ave., Lubbock, Texas 76424-3132

Bridgette De La Cruz, Building a Brighter Lockhart, 1607 Bluebell Cir, Lockhart, Texas 78644-1233

Deadline: Personal Financial Statement due February 12, 2020

Scott F. Ford, 5427 Mossy Timbers Dr., Humble, Texas 77346

Stephen P. Gunnels, 13815 Barons Bridge, Houston, Texas 77069-1943

Shawn W. Jones, 4408 Fremont Ln., Plano, Texas 75093

Donna G. King, 114 Silverstone, Georgetown, Texas 78633

Fernando Jesus Padron, P.O. Box 40216, San Antonio, Texas 78240

Jessica M. Pallett, 1308 Kiowa Dr., Arlington, Texas 76012

Colin D. Ross, 813 Henderson St., Houston, Texas 77007

Karen Nicole Sprabary, 416 E. Kempner St., Mabank, Texas 75147

Lina Reyes Trevino, P.O. Box 360, Munday, Texas 76371-0360

TRD-202003865
Anne Temple Peters
Executive Director
Texas Ethics Commission
Filed: September 18, 2020

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General Land Office

Coastal Boundary Survey--Dagger Point, Aransas NWR

Project: Dagger Point - Aransas NWR - San Antonio Bay State Tracts 44-47, 56 & 57, Aransas & Calhoun Counties

Project No: Coastal Bend Bays and Estuaries (CBBEP) Project # 1931

Project Manager: Amy Nunez, Coastal Resources

Surveyor: James M. Naismith, Licensed State Land Surveyor

Description: Coastal Boundary Survey, dated September 4, 5 & 16, 209, delineating the Littoral Boundary along the Western Shoreline of San Antonio Bay; the Eastern Boundary of the Aransas National Wildlife Refuge; the Western Boundary of State Submerged Tracts 40, 44, 45, 47, 55, 56 & 57; Eastern Boundaries of Surveys for Aransas CSL, A-229, C B, Benoist, A-16, E. Titus, A-204, D. O'Boyle, A-169, H. Tract, A-209, S. Perry, A-176, B. Duval, A-59, J. Kroeger, A-337 and A. Wiggington, A-217, Aransas and Calhoun Counties, Texas in connection with planned Erosion Response Activity for Coastal Bend Bays and Estuaries Program (CBBEP) # 1931. Dagger Point Coastal and Marine Habitat Protection and Restoration. Centroid coordinates N 28°16'34", W 96°47'54", WGS84. A copy of the survey has been filed in Volume 7, Page 103, Plat Records of Aransas County, Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the *Texas Natural Resources Code,* Chapter 33.136.

For a copy of this survey or more information on this matter, contact David Klotz, LSLS, Senior Land Surveyor in the Survey Division, Texas General Land Office, by phone at (512) 463-5107 or email at david.klotz@glo.texas.gov.

Filed as: *Tex.Nat.Res.Code* Article 33.136 Aransas County, Sketch No. 17

TRD-202003932
Mark Havens
Deputy Land Commissioner and Chief Clerk
General Land Office
Filed: September 23, 2020

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Coastal Boundary Survey--McFaddin National Wildlife Refuge

Project: McFaddin National Wildlife Refuge adjacent to Gulf of Mexico State Tracts 14, 48-51, 62-66, 80-82, & 98-101 from High Island to Sea Rim State Park, Galveston, Chambers, & Jefferson Counties, TX

Project No: Coastal Erosion Planning and Response Act (CPERA) Project # 1658

Project Manager: Kelly Brooks, Coastal Resources

Surveyor: James M. Naismith, Licensed State Land Surveyor

Description: Coastal Boundary Survey, dated May 1-3 & 23-24, 2019, delineating the littoral boundary along the Gulf of Mexico shoreline of McFaddin National Wildlife Refuge adjacent to Gulf of Mexico & State Tracts 14, 48-51, 62-66, 80-82, & 98-101 in Galveston, Chambers, & Jefferson Counties, Texas in connection with planned Coastal Erosion Planning and Response Act (CEPRA) Project # 1658, Dune Restoration and Beach Nourishment. Centroid coordinates N 29°37'22", W 94°12'01", WGS84. A copy of the survey has been filed in Book 1, Page 256, Surveyor's Records of Galveston County, Texas, Volume 4, Page 204, Surveyor's Records, File Number 154825, Official Public Records of Chambers County, and Instrument Number 2020020870, Official Public Records of Jefferson County, Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the *Texas Natural Resources Code,* Chapter 33.136.

For a copy of this survey or more information on this matter, contact David Klotz, LSLS, Senior Land Surveyor in the Survey Division, Texas General Land Office, by phone at (512) 463-5107 or email at david.klotz@glo.texas.gov.

Filed as: *Tex.Nat.Res.Code* Article 33.136 Jefferson County, Sketch No. 13

TRD-202003931
Mark Havens
Deputy Land Commissioner and Chief Clerk
General Land Office
Filed: September 23, 2020

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Coastal Boundary Survey--Smith Point, Edward T. Branch A-40, Chambers County

Project: Smith Point, Edward T. Branch A-40, Chambers County

Project No: GLO # SL20190035

Project Manager: Amy Nunez, Coastal Resources

Surveyor: Michael Hoover, Licensed State Land Surveyor

Description: Coastal Boundary Survey, dated May 5, 2020, delineating the line of Mean High Water along the southerly line of the Edward T. Branch Survey, Abstract number 40, Chambers County, Texas, and a northerly line of Galveston Bay/Galveston East Bay and State Submerged Tract numbers 138 and 197, Chambers County, Texas in connection with planned Erosion Response Activity SL20190035. Situated south of Smith Point along the south shore of Candy Abshier Wildlife Management Area. Centroid coordinates N 29°31'29", W 94°45'46", WGS84. A copy of the survey has been filed in Book 4, Page 205, County Surveyor Records, Chambers County, Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the *Texas Natural Resources Code*, Chapter 33.136.

For a copy of this survey or more information on this matter, contact David Klotz, LSLS, Senior Land Surveyor in the Survey Division, Texas General Land Office, by phone at (512) 463-5107 or email at david.klotz@glo.texas.gov.

Filed as: *Tex.Nat.Res.Code* Article 33.136, Chambers County, Sketch No. 12

TRD-202003933

Mark Havens
Deputy Land Commissioner and Chief Clerk
General Land Office
Filed: September 23, 2020

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Official Notice to Vessel Owner/Operator

(Pursuant to §40.254, Tex Nat. Res. Code)

PRELIMINARY REPORT

Authority

This preliminary report and notice of violation was issued by the Deputy Director, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on September 14, 2020.

Facts

Based on an investigation conducted by Texas General Land Office-Region 2 staff on September 11, 2020, the Commissioner of the General Land Office (GLO), has determined that a 25' recreational boat identified as **GLO Vessel Tracking Number 2-82818** is in a wrecked, derelict and substantially dismantled condition without the consent of the commissioner. The vessel is located at Du Lac Trace, Seabrook, TX in Harris County, TX.

The GLO determined that pursuant to OSPRA §40.254(b)(2)(B), that the vessel does have intrinsic value. The GLO has also determined that, because of the vessel's location and condition, the vessel poses a THREAT TO THE ENVIRONMENT/THREAT TO PUBLIC HEATH, SAFETY, OR WELFARE.

Violation

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of § 40.254 of the Texas Natural Resources Code, (OSPRA) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or threatened unauthorized discharge of oil; a threat to the public health, safety, and welfare; a threat to the environment; or a navigational hazard. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Deputy Director has determined that Thomas Hartley is the person responsible for abandoning this vessel (GLO Tracking Number 2-82818) and recommends that the Commissioner order the abandoned vessel be disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the GLO. If the GLO removes and disposes of the vessel, the GLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator. For additional information contact us at (512) 463-2613.

TRD-202003888

Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: September 22, 2020

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Payment Rate for the Truman W. Smith Pediatric Care Facility

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on October 19, 2020, at 9:00 a.m., to receive comments on the proposed payment rate for Truman W. Smith Children's Care Center, a nursing facility in the pediatric care facility special reimbursement class of the Nursing Facility program.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only. Physical entry to the hearing will not be permitted. Please join the meeting from your computer, tablet or smartphone at https://attendee.gotowebinar.com/register/3245834601145905680. After registering, you will receive a confirmation email containing information about joining the webinar. You can also dial in using your phone by calling (914) 614-3221, access code 912-786-812.

If you are new to GoToMeeting, please download the GoToMeeting app at https://global.gotomeeting.com/install/626873213 before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursement rates.

Proposal. HHSC proposes to implement a payment rate of $302.02 per day for the Truman W. Smith Children's Care Center, effective September 1, 2020. The current payment rate is $296.63 per day.

Methodology and Justification. The proposed payment rate was developed in compliance with HHSC's established rate methodology in Title 1 of the Texas Administrative Code (1 TAC) §355.307(c)(3), which addresses the reimbursement methodology for the pediatric care facility special reimbursement class of nursing facilities.

Briefing Packet. A briefing packet describing the proposed payment rate will be available at http://rad.hhs.texas.gov/rate-packets on or after October 2, 2020. Interested parties may obtain a copy of the briefing packet before the hearing by contacting the HHSC Provider Finance Department by telephone at (512) 424-6637; by fax at (512) 730-7475; or by email at RAD-LTSS@hhsc.state.tx.us. The briefing packet will also will be available for download during the online hearing. For clarification, the HHSC Rate Analysis Department is now known as the Provider Finance Department.

Written Comments. Written comments regarding the proposed payment rate may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by email to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For the quickest

response, please use email or phone if possible for communication with HHSC related to this rate hearing.

TRD-202003868
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: September 21, 2020

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Department of State Health Services

Order Extending the Temporary Scheduling of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA in Schedule I

The Acting Administrator of the Drug Enforcement Administration issued a temporary scheduling order to extend the temporary schedule I status of naphthalen-1-yl-1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (Other names: NM2201; CBL2201), *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other name: 5F-AB-PINACA), 1-(4-Cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL-BINACA; CUMYL-4CN-BINACA; SGT-78), methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA), and 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA). This order was published in the *Federal Register,* Volume 85, Number 134, pages 42296-42297 and was effective July 10, 2020.

The extension of the temporary scheduling of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA in schedule I is necessary to allow the permanent scheduling action to be completed.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the *Federal Register.* In the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order that temporary scheduling of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA in schedule I be extended.

-Schedule I temporarily listed substances subject to emergency scheduling by the U.S. Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylpentanamide (Other name: valeryl fentanyl);

(2) *N*-(4-Methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide (Other name: *p*-methoxybutyryl fentanyl);

(3) *N*-(4-Chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (Other name: *p*-chloroisobutyryl fentanyl);

(4) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylisobutyramide (Other name: isobutyryl fentanyl);

(5) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide (Other name: cyclopentyl fentanyl);

(6) Fentanyl-related substances.

(6-1) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect under Section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355], that is structurally related to fentanyl by one or more of the following modifications:

(6-1-1) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(6-1-2) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups;

(6-1-3) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(6-1-4) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(6-1-5) Replacement of the *N*-propionyl group by another acyl group;

(6-2) This definition includes, but is not limited to, the following substances:

(6-2-1) *N*-(1-(2-Fluorophenethyl)piperidin-4-yl)-*N*-(2-fluorophenyl)propionamide (Other name: 2'-fluoro-*o*-fluorofentanyl);

(6-2-2) *N*-(2-Methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide (Other name: *o*-methyl acetylfentanyl);

(6-2-3) *N*-(1-Phenethylpiperidin-4-yl)-*N*,3-diphenylpropanamide (Other names: β'-phenyl fentanyl; hydrocinnamoyl fentanyl);

(6-2-4) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylthiophene-2-carboxamide (Other name: thiofuranyl fentanyl);

(6-2-5) (E)-*N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylbut-2-enamide (Other name: crotonyl fentanyl);

(7) Naphthalen-1-yl-1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (Other names: NM2201; CBL2201);

(8) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other name: 5F-AB-PINACA);

(9) 1-(4-Cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL-BINACA; CUMYL-4CN-BINACA; SGT-78);

(10) Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA);

(11) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA);

(12) *N*-ethylpentylone (Other names: ephylone;1-(1,3-benzodioxil-5-yl)-2-(ethylamino)-pentan-1-one);

(13) Ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-EDMB-PINACA);

(14) Methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-MDMB-PICA);

(15) *N*-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other names: FUB-AKB48; FUB-APINACA; AKB48 *N*-(4-FLUOROBENZYL));

(16) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 5F-CUMYL-PINACA; SGT-25);

(17) (1-(4-Fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other name: FUB-144);

(18) *N*-Ethylhexedrone (Other name: 2-(ethylamino)-1-phenylhexan-1-one);

(19) α-pyrrolidinohexanophenone (Other names: α-PHP; α-pyrrolidinohexiophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one);

(20) 4-Methyl-α-ethylaminopentiophenone (Other names: 4-MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one);

(21) 4-Methyl-α-pyrrolidinohexiophenone (Other names: MPHP, 4'-methyl-α-pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);

(22) α-pyrrolidinoheptaphenone (Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one); and

(23) 4-Chloro-α-pyrrolidinovalerophenone (Other names: 4-chloro-α-PVP; 4-chloro-α-pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one).

TRD-202003956
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: September 23, 2020

♦ ♦ ♦

Texas Higher Education Coordinating Board

Correction of Error

The Texas Higher Education Coordinating Board published proposed amendments to 19 TAC §4.314 in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5748). Due to an error by the Texas Register, the proposed amendments to §4.134(10) were published incorrectly. The correct proposed amended text should read as follows:

(10) If the Coordinating Board's SARA Coordinator denies an institution's application for membership in SARA, a written reason for denial will be provided. [~~If institutional membership is denied, the board will provide a written reason for denial.~~] The institution may reapply at any time, having corrected any deficiencies, or may appeal the denial within 30 calendar days to the Coordinating Board's SARA Signatory. [~~SARA director of SREB. If the denial is upheld by SREB, the institution may appeal to NC-SARA.~~]The Coordinating Board's SARA Signatory will review the appeal and render a final decision. If the SARA Signatory upholds the denial, the institution may appeal to the SREB to determine if the board has met the requirements of SARA, but the SREB cannot overturn the final decision made by the Coordinating Board's SARA Signatory.

TRD-202003877

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Notice of Intent to Engage in Negotiated Rulemaking--Minority Health Research & Education Grant Program

(Texas Public and Private/Independent Universities and Health-Related Institutions)

The Texas Higher Education Coordinating Board (THECB) intends to engage in negotiated rulemaking to amend Chapter 6, Subchapter C, §6.74 rules for the distribution of Minority Health Research & Education Grant Program trusteed funds for public and private/independent universities and health-related institutions of higher education and to develop procedures for THECB staff to verify the accuracy of the application of funding distribution. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via GovDelivery to all chancellors and presidents at public and private/independent universities and health-related institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their system/campus.

From this effort, 11 individuals responded (out of approximately 87) and nominated someone from their system/campus to participate on the negotiated rulemaking committee for Minority Health Research & Education Grant Program. The positions held by nominees include Associate Deans, Vice Presidents, Professors, an Associate Vice President/Chief of Staff, and an Assistant Commissioner. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for Minority Health Research & Education Grant Program:

1. Public universities;
2. Public health-related institutions;
3. Private universities;
4. Private health-related institutions;
5. Centers for Teacher Education; and
6. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following nine individuals to the negotiating rulemaking committee for Minority Health Research & Education Grant Program to represent affected parties and the agency:

Public Universities

Chiquesha L. Davis, Department Head of Post Licensure Nursing Programs and Assistant Professor for School of Nursing, Tarleton State University (Texas A&M University System)

Arzu Ari, Associate Dean for Research and Professor of Respiratory Care, Texas State University (Texas State University System)

Elizabeth Trejos-Castillo, Associate Chair and Graduate Program Director for Human Development and Family Studies, Texas Tech University (Texas Tech University System)

Brandi Levingston, Director of Programs in Rehabilitation, University of North Texas (University of North Texas System)

Erica Sosa, Associate Dean for Research and Associate Professor for Public Health, The University of Texas at San Antonio (The University of Texas System)

Public Health-Related Institutions

Olga Rodriguez, Associate Vice President and Chief of Staff, Texas A&M University Health Science Center (Texas A&M University System)

Emmanuel Elueze, Vice President for Medical Education and Professional Development and Professor of Medicine, The University of Texas Health Science Center at Tyler (The University of Texas System)

Private/Independent Universities and Health-Related Institutions and Centers for Teacher Education

Elizabeth Puthoff, Vice President for Research and Policy Analysis, Independent Colleges & Universities of Texas, Inc.

Texas Higher Education Coordinating Board

Stacey Silverman, Assistant Commissioner for Academic Quality and Workforce

If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

--Name and contact information of the person submitting the application;

--Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;

--Name and contact information of the person being nominated for membership; and

--Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for Minority Health Research & Education Grant Program. Comments and applications for membership on the committee must be submitted by October 11, 2020, to Laurie A. Frederick, Convener, Negotiated Rulemaking, Texas Higher Education Coordinating Board, Laurie.Frederick@highered.texas.gov.

TRD-202003944
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: September 23, 2020

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Texas Department of Insurance

Company Licensing

Application for Unigard Insurance Company, a foreign fire and/or casualty company, to change its name to Dairyland American Insurance Company. The home office is in Stevens Point, Wisconsin.

Application for incorporation in the state of Texas for SureChoice Reciprocal Exchange, a domestic Lloyds/reciprocal company. The home office is in Austin, Texas.

Application to do business in the state of Texas for Westfield Champion Insurance Company, a foreign fire and/or casualty company. The home office is in Center, Ohio.

Application to do business in the state of Texas for Westfield Superior Insurance Company, a foreign fire and/or casualty company. The home office is in Center, Ohio.

Application to do business in the state of Texas for Westfield Premier Insurance Company, a foreign fire and/or casualty company. The home office is in Center, Ohio.

Application to do business in the state of Texas for Westfield Touchstone Insurance Company, a foreign fire and/or casualty company. The home office is in Center, Ohio.

Application to do business in the state of Texas for American European Insurance Company, a foreign fire and/or casualty company. The home office is in Cherry Hill, New Jersey.

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-202003943
James Person
General Counsel
Texas Department of Insurance
Filed: September 23, 2020

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Notice of Rate Filing: Texas Automobile Insurance Plan Association

Description:

On September 14, 2020, the Texas Automobile Insurance Plan Association (TAIPA) filed a request to charge new insurance rates for commercial automobiles. The filed rates represent a 4.8% increase in commercial automobile rates. TAIPA proposed an effective date of March 1, 2021, for new and renewal business. TAIPA did not file new proposed rates for private passenger automobiles.

The Commissioner of Insurance will review the filing to determine whether TAIPA's proposed rates are just, reasonable, adequate, not excessive, not confiscatory, and not unfairly discriminatory for the risks covered, as required by Texas Insurance Code §2151.201. TAIPA's proposed rates must also be sufficient to carry all claims to maturity and meet the expenses incurred in writing and servicing the business.

Pursuant to Texas Insurance Code §2151.2022(c), the Commissioner has extended the period by which the filing must be approved or disapproved by 30 days. The filing must now be approved or disapproved no later than November 13, 2020.

To Review, Request Copies, and Comment:

--To review or get copies of TAIPA's rate filing:

--Online: Go to www.tdi.texas.gov/rules/2020/exrules.html.

--In person: You can review the filing at the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. If you would like to review the materials in person, please email ChiefClerk@tdi.texas.gov to arrange a time.

--By mail: Write to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

--To comment on the rate filing, send written comments by email to ChiefClerk@tdi.texas.gov, or by mail to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Hand-delivered comments must be directed to the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701, and can be delivered during regular business hours. Your comments must be received by 5:00 p.m., central time, on October 21, 2020.

TRD-202003879

James Person
General Counsel
Texas Department of Insurance
Filed: September 21, 2020

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Nortex Regional Planning Commission

Request for Proposals

Nortex Regional Planning Commission is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal year ending September 30, 2020, with the option of auditing its financial statements for each of the three subsequent fiscal years. These audits are to be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants, OMB Circular A-133, and the State of Texas Single Audit Circular.

To obtain copies of this Request for Proposal, please contact Jessie Johnson, Nortex Regional Planning Commission, P.O. Box 5144, Wichita Falls, Texas 76307, telephone (940) 322-5281. A bidder's conference is scheduled for October 6, 2020, at 1:30 p.m., CST, at the offices of Nortex Regional Planning Commission, 4309 Jacksboro Highway, Wichita Falls, Texas, 76302 to answer any and all questions. All proposals must be received no later than 4:00 p.m., CST, on October 13, 2020. Proposals received after the specified date and time will not be considered.

TRD-202003895
Dennis Wilde
Executive Director
Nortex Regional Planning Commission
Filed: September 22, 2020

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Grant of Pipeline Easements - Brazoria County

Approximately 30 Acres at the Justin Hurst Wildlife Management Area

In a meeting on November 10, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the grant of pipeline easements of approximately 30 acres at the Justin Hurst Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to ted.hollingsworth@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

Acquisition of Land - Presidio County

Approximately 60 Acres at Chinati Mountains State Natural Area

In a meeting on November 10, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing an acquisition of approximately 60 acres at Chinati Mountains State Natural Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to ted.hollingsworth@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

Acquisition of Land - Galveston County

Approximately 3.7 Acres at Galveston Island State Park

In a meeting on November 10, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing an acquisition of approximately 3.7 acres at Galveston Island State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to ted.hollingsworth@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

Acquisition of Land - Marion County

Approximately 745 Acres at the Caddo Lake Wildlife Management Area

In a meeting on November 10, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing an acquisition of approximately 745 acres at the Caddo Lake Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to ted.hollingsworth@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

TRD-202003937
Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
Filed: September 23, 2020

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Workforce Solutions Brazos Valley Board

Public Notice Request for Proposal for Monitoring Services

The Workforce Solutions Brazos Valley Board (WSBVB) is soliciting quotes for a qualified contractor with Texas Workforce Commission program knowledge to provide monitoring services, that shall include, but not be limited to, workforce program compliance review and eligibility and the review of support services, which follow the rules and guidelines of Texas Workforce Commission's and WSBVB's policies and procedures. Program monitoring shall occur monthly, at a minimum, for workforce programs. Other programs shall require quar-

terly monitoring or monitoring as needed. Some programs occur during specific times of the year and their monitoring shall occur at the end of the specific program. The contract obtained through this procurement shall be a cost reimbursement contract. The actual contract amount for monitoring is dependent on monitoring services needed throughout the year. The Monitoring Services RFP can be downloaded at www.bvjobs.org or by request to Barbara Clemmons via email at bclemmons@bvcog.org.

The purpose of the RFP is to solicit quotes for workforce program monitoring and the primary consideration in selecting a vendor will be their ability to provide program monitoring, as specified in the RFP.

The deadline for proposals will be 4:00 p.m. CST on Tuesday, October 13, 2020.

Bidders will have the opportunity to ask questions during the bidder's conference call, which is scheduled for Monday, September 28, 2020, 2:00 p.m. CST. Attendance on the bidder's conference call is not mandatory. All answers to questions from the bidder's conference call will be posted at www.bvjobs.org by close of business on Friday, October 2, 2020.

Deadline for Questions: The Bidder's Conference Call will be held on Monday, September 28, 2020, at 2:00 p.m. CST. The call in number is (979) 595-2802. If Bidders cannot attend the bidder's conference call on Monday, September 28, 2020, at 2:00 p.m. CST, they can submit their questions in writing concerning this RFP to Barbara Clemmons at bclemmons@bvcog.org no later than Wednesday, September 30, 2020, 5:00 p.m. CST. Answers to all questions received will be posted to www.bvjobs.org no later than Friday, October 2, 2020, 5:00 p.m. CST.

A proud partner of the American Job Center network.

Equal opportunity employer/program.

Auxiliary aids and services are available upon request to individuals with disabilities.

Deaf, hard of hearing or speech-impaired customers may contact:

Relay Texas (800) 735-2989 (TTY) and 711 Voice.

TRD-202003867
Vonda Morrison
Program Manager
Workforce Solutions Brazos Valley Board
Filed: September 20, 2020


TEXAS

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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