
TEXAS REGISTER

Volume 46 Number 19

May 7, 2021

Pages 2935 - 3074



TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, Texas 78711
(512) 463-5561
FAX (512) 463-5569

<https://www.sos.texas.gov>
register@sos.texas.gov

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

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

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

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

Secretary of State - Ruth R. Hughs

Director - Robert Summers

Editor-in-Chief - Jill S. Ledbetter

Editors

Liz Cordell

Eddie Feng

Belinda Kirk

Cecilia Mena

Joy L. Morgan

Breanna Mutschler

Barbara Strickland

IN THIS ISSUE

GOVERNOR

Appointments2941

ATTORNEY GENERAL

Opinions2943

EMERGENCY RULES

HEALTH AND HUMAN SERVICES COMMISSION

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

26 TAC §551.472945

LICENSING STANDARDS FOR ASSISTED LIVING
FACILITIES

26 TAC §553.20032951

NURSING FACILITY REQUIREMENTS FOR
LICENSURE AND MEDICAID CERTIFICATION

26 TAC §554.28032957

LICENSING STANDARDS FOR HOME AND
COMMUNITY SUPPORT SERVICES AGENCIES

26 TAC §558.9502960

TEACHER RETIREMENT SYSTEM OF TEXAS

EMPLOYMENT AFTER RETIREMENT

34 TAC §31.12967

DEPARTMENT OF AGING AND DISABILITY SERVICES

INTELLECTUAL DISABILITY SERVICES-
-MEDICAID STATE OPERATING AGENCY
RESPONSIBILITIES

40 TAC §9.198, §9.1992968

PRIMARY HOME CARE, COMMUNITY
ATTENDANT SERVICES, AND FAMILY CARE
PROGRAMS

40 TAC §47.252975

40 TAC §47.652976

PROPOSED RULES

TEXAS DEPARTMENT OF AGRICULTURE

TEXAS AGRICULTURAL FINANCE AUTHORITY

4 TAC §§28.2, 28.4, 28.52978

4 TAC §§28.10, 28.13 - 28.152979

4 TAC §§28.20, 28.23, 28.26, 28.32, 28.35, 28.362979

4 TAC §§28.42 - 28.442980

4 TAC §28.552980

4 TAC §§28.60 - 28.622981

TEXAS HIGHER EDUCATION COORDINATING BOARD

RULES APPLYING TO ALL PUBLIC INSTITUTIONS
OF HIGHER EDUCATION IN TEXAS

19 TAC §§4.360 - 4.3642981

TEXAS EDUCATION AGENCY

SCHOOL DISTRICTS

19 TAC §61.10202983

HEALTH AND HUMAN SERVICES COMMISSION

NURSING FACILITY ADMINISTRATORS

26 TAC §§555.1 - 555.32987

26 TAC §555.42990

26 TAC §§555.11 - 555.162990

26 TAC §§555.11 - 555.182990

26 TAC §§555.31 - 555.422993

26 TAC §§555.51 - 555.572999

TEXAS DEPARTMENT OF PUBLIC SAFETY

COMMERCIAL VEHICLE REGULATIONS AND
ENFORCEMENT PROCEDURES

37 TAC §4.13003

37 TAC §4.113004

37 TAC §4.373006

TEXAS WORKFORCE COMMISSION

UNEMPLOYMENT INSURANCE

40 TAC §815.43011

40 TAC §815.1753011

40 TAC §§815.180 - 815.1853011

WITHDRAWN RULES

HEALTH AND HUMAN SERVICES COMMISSION

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

26 TAC §551.473015

LICENSING STANDARDS FOR ASSISTED LIVING
FACILITIES

26 TAC §553.20033015

NURSING FACILITY REQUIREMENTS FOR
LICENSURE AND MEDICAID CERTIFICATION

26 TAC §554.28033015

LICENSING STANDARDS FOR HOME AND
COMMUNITY SUPPORT SERVICES AGENCIES

26 TAC §558.9503015

DEPARTMENT OF AGING AND DISABILITY SERVICES

INTELLECTUAL DISABILITY SERVICES-MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

40 TAC §9.198, §9.199.....3016

ADOPTED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

PURCHASE OF GOODS AND SERVICES BY THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION

1 TAC §391.101, §391.103.....3017

1 TAC §§391.201, 391.203, 391.205, 391.207, 391.209, 391.211, 391.213, 391.2153018

1 TAC §391.301.....3018

1 TAC §§391.401, 391.403, 391.405, 391.407, 391.409.....3019

1 TAC §§391.501, 391.503, 391.505.....3019

1 TAC §§391.601, 391.603, 391.605.....3019

1 TAC §§391.621, 391.623, 391.625, 391.627, 391.629, 391.631, 391.633, 391.635, 391.6373020

1 TAC §§391.651, 391.653, 391.655, 391.657, 391.659, 391.661, 391.663, 391.665, 391.667, 391.6693020

1 TAC §397.711.....3021

1 TAC §§391.101, 391.103, 391.105, 391.107.....3021

1 TAC §§391.201, 391.203, 391.205, 391.207, 391.209, 391.211, 391.213, 391.215, 391.217, 391.2193022

1 TAC §391.241, §391.243.....3022

1 TAC §§391.301, 391.303, 391.305, 391.307, 391.309.....3023

1 TAC §§391.401, 391.403, 391.405.....3024

1 TAC §391.501, §391.503.....3024

1 TAC §§391.601, 391.603, 391.605.....3025

1 TAC §§391.701, 391.703, 391.705.....3025

1 TAC §§391.721, 391.723, 391.725, 391.727, 391.729, 391.731, 391.733, 391.735, 391.7373025

1 TAC §§391.751, 391.753, 391.755, 391.757, 391.759, 391.761, 391.763, 391.765, 391.767, 391.7693026

COMPTROLLER OF PUBLIC ACCOUNTS

FUNDS MANAGEMENT (FISCAL AFFAIRS)

34 TAC §5.36.....3030

34 TAC §5.46.....3030

RULE REVIEW

Adopted Rule Reviews

Texas Department of Agriculture.....3039

IN ADDITION

State Bar of Texas

Committee on Disciplinary Rules and Referenda Proposed Rule Changes: Proposed Rule 1.00 (Terminology), Texas Disciplinary Rules of Professional Conduct.....3041

Office of Consumer Credit Commissioner

Notice of Rate Ceilings.....3047

Texas Education Agency

Request for Applications Concerning the 2021-2022 Texas Reading Initiative - Birth to Kinder Grant3047

Texas Commission on Environmental Quality

Agreed Orders.....3048

Enforcement Orders.....3051

Enforcement Orders.....3052

Notice of District Petition.....3053

Notice of Minor Amendment: Radioactive Material License Number R01400.....3053

Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions3054

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions3055

Notice of Water Quality Application3056

Update to the Water Quality Management Plan (WQMP)3056

General Land Office

Official Notice to Vessel Owner/Operator3056

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review3057

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review of Indian Health Services.....3058

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Allergy Testing.....3058

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Cervical Disc Replacement.....3059

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Cytogenic Constitutional (Genome-wide) Microarray Analysis.....3059

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Diabetic Equipment and Supplies.....3060

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Hepatitis B Vaccine.....3061

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Prostate Surgeries.....3061

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Subcutaneous Implantable Cardioverter Defibrillator.....3062

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Transverse Abdominis Plane (TAP) Blocks3062

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Review of Healthcare Common Procedure Coding System (HCPCS) Updates3063

Texas Department of Insurance

Company Licensing3063

Texas Lottery Commission

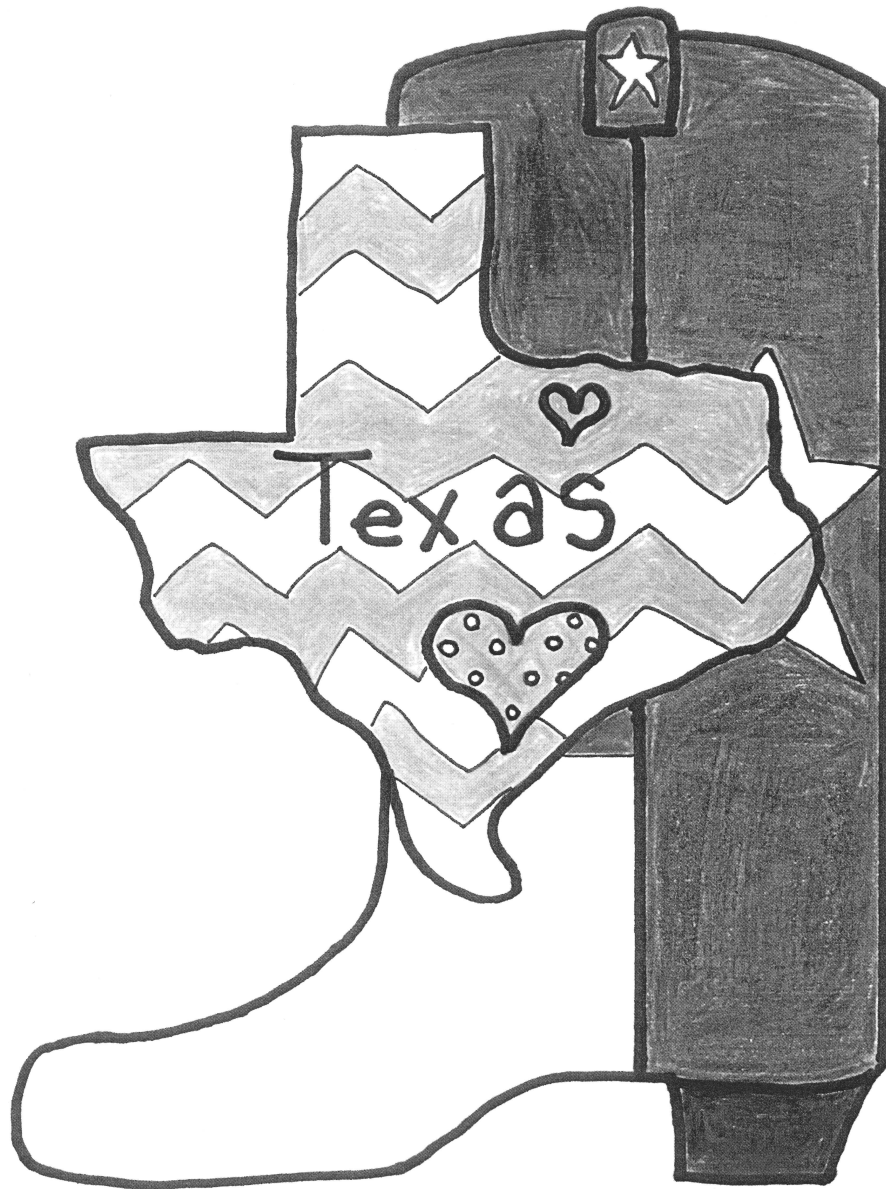
Scratch Ticket Game Number 2325 "BONUS GAME BINGO" ...3064

Panhandle Regional Planning Commission

Legal Notice.....3073

Texas Parks and Wildlife Department

Notice of Availability and Request for Public Comment Within 30 Days3074



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 April 21, 2021

Appointed to the University of Texas System Board of Regents, for a term to expire February 1, 2023, Robert S. "Steve" Hicks of Austin, Texas (replacing Kevin P. Eltife of Tyler, who has accepted and qualified for another offer).

Appointed to the University of Texas System Board of Regents, for a term to expire February 1, 2027, Nolan E. Perez, M.D. of Harlingen, Texas (Dr. Perez is being reappointed).

Appointed to the University of Texas System Board of Regents, for a term to expire February 1, 2027, Stuart W. Stedman of Houston, Texas (replacing Robert S. "Steve" Hicks of Austin, whose term expired).

Appointed to the Texas State Board of Examiners of Professional Counselors, for a term to expire February 1, 2025, Brenda S. Campagnone of San Antonio, Texas (replacing Jodie L. Elder, Ph.D. of Dallas, who resigned).

Appointed to the Texas State Board of Examiners of Professional Counselors, for a term to expire February 1, 2027, Carmelia "Lia" Amuna, Ph.D. of Killeen, Texas (replacing Brenda S. Campagnone of San Antonio, whose term expired).

Appointed to the Texas State Board of Examiners of Professional Counselors, for a term to expire February 1, 2027, Loretta J. Bradley, Ph.D. of Lubbock, Texas (Dr. Bradley is being reappointed).

Designated as presiding officer of the Public Utility Commission of Texas, for a term to expire at the pleasure of the Governor, Peter M. Lake of Austin (Mr. Lake is replacing Arthur C. D'Andrea of Austin).

Appointments for April 22, 2021

Designated as chairman of the Texas Water Development Board, for a term to expire at the pleasure of the Governor, Brooke T. Paup of Austin (Ms. Paup is replacing Peter M. Lake of Austin).

Appointed to the Texas State Board of Examiners of Professional Counselors, for a term to expire February 1, 2027, Christopher S. "Chris" Taylor, Ph.D. of Hurst, Texas (Dr. Taylor is being reappointed).

Appointed to the Texas Southern University Board of Regents, for a term to expire February 1, 2027, Caroline Baker Hurley of Houston, Texas (replacing Wesley Terrell of Dallas, whose term expired).

Appointed to the Texas Southern University Board of Regents, for a term to expire February 1, 2027, Mary Evans Sias, Ph.D. of Richardson, Texas (Dr. Sias is being reappointed).

Appointed to the Texas Physician Assistant Board, for a term to expire February 1, 2027, Clayton P. "Clay" Bulls of Abilene, Texas (Mr. Bulls is being reappointed).

Appointed to the Texas Physician Assistant Board, for a term to expire February 1, 2027, Karrie L. Crosby of Robinson, Texas (Ms. Crosby is being reappointed).

Appointed to the Texas Physician Assistant Board, for a term to expire February 1, 2027, Victor Ho, M.D. of Houston, Texas (Dr. Ho is being reappointed).

Appointed to the Texas Physician Assistant Board, for a term to expire February 1, 2027, Andrew W. Sauer D.M.Sc. of Amarillo, Texas (Dr. Sauer is being reappointed).

Appointed to the Texas Physician Assistant Board, for a term to expire February 1, 2027, Laura L. "Lali" Shipley of Austin, Texas (replacing Jorge "George" Martinez of Mission, whose term expired).

Appointments for April 23, 2021

Appointed to the Texas Board of Nursing, for a term to expire January 31, 2027, Kenneth D. "Ken" Johnson of San Angelo, Texas (replacing Diana R. Flores of Helotes, whose term expired).

Appointments for April 26, 2021

Appointed to the San Jacinto River Authority Board of Directors, for a term to expire October 16, 2021, Billie R. "Stacey" Buick of Montgomery, Texas (replacing Brenda Cooper of Montgomery, who resigned).

Appointments for April 27, 2021

Appointed as the Nonresident Violator Compact Administrator, for a term to expire February 1, 2023, Sheri Sanders Gipson of Coupland, Texas (Ms. Gipson is being reappointed).

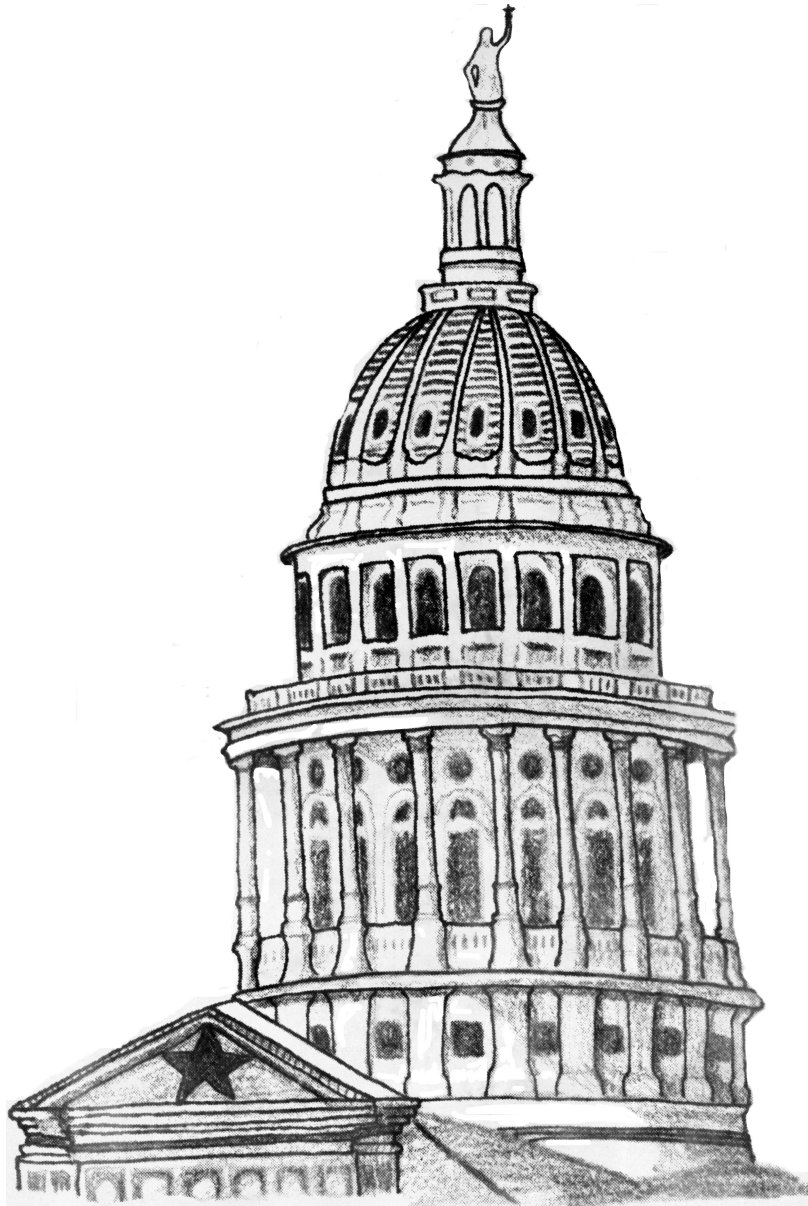
Appointed to the Angelina and Neches River Authority Board of Directors, for a term to expire September 5, 2023, Robert E. "Eddie" Hopkins of Jasper, Texas (replacing Patricia E. "Pat" Dickey of Crockett, who is deceased).

Appointed to the Texas Southern University Board of Regents, for a term to expire February 1, 2027, Marilyn A. Rose of Houston, Texas (Ms. Rose is being reappointed).

Greg Abbott, Governor

TRD-202101700





THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

Opinions

Opinion No. KP-0368

The Honorable Dee Hobbs

Williamson County Attorney

405 M.L.K. Street, #7

Georgetown, Texas 78626

Re: Authority of a county attorney to file suit to enjoin a violation of a restriction contained in a properly recorded plat of property within the county (RQ-0403-KP)

SUMMARY

Subsection 203.003(a) of the Property Code authorizes a county attorney to sue to enjoin or abate violations of a restriction contained in a

properly recorded plat affecting a real property subdivision located in the county. The authority granted exists independent from and regardless of whether a complaint was filed with the county attorney to initiate the lawsuit.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202101665

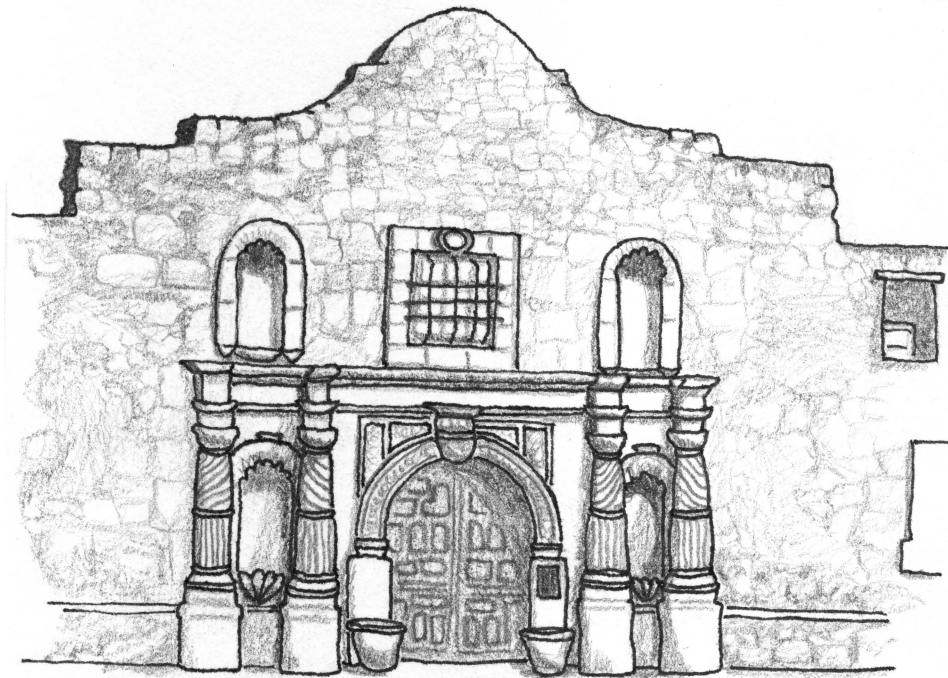
Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: April 27, 2021





EMERGENCY RULES

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 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 Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Part 1, Texas Administrative Code, Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID) or Related Conditions, new §551.47, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in ICF/IID. 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. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Intermediate Care Facility COVID-19 Response--Expansion of Reopening Visitation.

To protect intermediate care 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 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 §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 section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 242.

§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.

(2) COVID-19 negative--The status of 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 in the last 14 days.

(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 receiving hospice services or who is at or near the end of life, with or without receiving hospice services, or whose prognosis does not indicate recovery. An end-of-life visit is permitted in all facilities and for all individuals at or near the end of life.

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

(6) Essential caregiver visit--A personal visit between an individual and an essential caregiver. An essential caregiver visit is permitted for all individuals with any COVID-19 status.

(7) Facility-acquired COVID-19 infection--COVID-19 infection that is acquired after admission in a 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) Indoor visit--A personal visit between an individual and one or more personal visitors that occurs in-person in a dedicated indoor space.

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

(11) 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.

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

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

(14) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, family members or friends of individuals at the end of life, and designated essential caregivers.

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

(16) 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.

(17) 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 facility but within a booth separated by a plexiglass barrier.

(18) PPE--Personal protective equipment.

(19) Providers of essential services--Contract doctors or nurses, home health and hospice workers, health care professionals, contract professionals, clergy members and spiritual counselors, guardianship specialists, advocacy professionals, and individuals operating under the authority of a local intellectual and developmental disability authority or a local mental health authority, whose services are necessary to ensure individual health and safety.

(20) Salon services visit--A personal visit between an individual and a salon services visitor.

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

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

(23) 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.

(24) Vehicle parade--A personal visit between an individual and one or more personal visitors, during which the individual re-

mains outdoors on the intermediate care facility campus, and a personal visitor drives past in a vehicle.

(b) Visitors, except for essential caregivers, may be any age. Visitors under the age of two are exempt from all requirements related to wearing masks described in this section.

(c) An intermediate care facility must screen all visitors prior to allowing them to enter the facility in accordance with subsection (d) of this section, except emergency services personnel entering the facility or facility campus in an emergency. 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 facility and reschedule the visit:

(1) fever, defined as a temperature of 100.4 Fahrenheit and above, or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) other signs or symptoms of COVID-19, including chills, new or worsening 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 CDC in Symptoms of Coronavirus at [cdc.gov](https://www.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, regardless of whether the person is fully vaccinated; or

(5) has tested positive for COVID-19 in the last 10 days.

(e) An intermediate care facility must allow persons providing critical assistance, including essential caregivers, and persons with legal authority to enter to enter the facility if they pass the screening in subsection (d) of this section.

(f) A person providing critical assistance who has had contact with an individual with COVID-19 positive or COVID-19 unknown status, but does not meet the CDC definition of close contact or unprotected exposure, must not be denied entry to the facility unless the person providing critical assistance does not pass the screening criteria described in subsection (d)(1) - (3) and (5) of this section, or any other screening criteria based on CDC guidance.

(g) If the facility has offered a complete series of a one- or two-dose COVID-19 vaccine to individuals and staff and documented each individual's choice to vaccinate or not vaccinate, the facility must allow essential caregiver visits, end-of-life visits, indoor visits, and outdoor visits as required by this subsection. If an intermediate care facility fails to comply with the requirements of this section, HHSC may impose licensure remedies in accordance with Subchapter H of this chapter (relating to Enforcement).

(1) A facility may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the facility.

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

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

(B) Up to two essential caregivers may visit a resident at the same time.

(C) 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 and staff.

(D) 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.

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

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

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

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

(iii) a requirement that the essential caregiver must wear a facemask or face covering and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the facility; for individuals who rely on lip reading or facial cues for communication needs, the essential caregiver may use a face mask with a clear screen over the mouth;

(iv) expectations regarding using only designated entrances and exits as directed, if applicable; and

(v) limiting visitation to the area designated by the facility in accordance with subparagraph (C) of this paragraph.

(G) An intermediate care facility must:

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

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

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

(iv) maintain documentation of the essential caregiver's training as required in subparagraph (F)(ii) of this paragraph;

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

(vi) 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

(vii) prevent visitation by the essential caregiver visitor if the essential caregiver has signs and symptoms of COVID-19 or an active COVID-19 infection.

(H) 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.

(3) To permit indoor visitation, a large intermediate care facility must:

(A) have separate areas, units, wings, halls, or buildings designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status individual cohorts; and

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

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

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

(B) infection control precautions; and

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

(5) The following limits apply to all visitation allowed under this section.

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

(B) Except as provided in subparagraph (C) of this paragraph, indoor visits and outdoor visits are permitted only for individuals who are COVID-19 negative.

(C) Essential caregiver visits and end-of-life visits are permitted for individuals who have COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(D) An individual may choose to have close or personal contact with their visitor during the visit. The visitor must maintain physical distancing between themselves and all other persons in the facility.

(E) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control measures, including the individual's room. The facility must limit the movement of the visitor through the facility to ensure interaction with other persons in the facility is minimized.

(F) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit. For individuals who rely on lip reading or facial cues for communication needs, the visitor may use a face mask with a clear screen over the mouth.

(G) The facility must encourage the individual to wear a facemask or face covering over both the nose and mouth, if tolerated, throughout the visit. The individual may remove their facemask or face covering to eat or drink during the visit.

(H) A facility must ensure equal access by all individuals to visitors and essential caregivers.

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

(J) A facility must ensure a comfortable and safe outdoor visitation area for outdoor visits, considering outside air temperature and ventilation.

(K) A facility must provide hand-washing stations, or hand sanitizer, to the visitor and individual before and after visits.

(L) The visitor and the individual must practice hand hygiene before and after the visit.

(h) If the facility has not offered a complete series of a one- or two-dose COVID-19 vaccine to individuals, the facility must allow limited personal visitation, as described in this subsection, upon meeting the qualifications described in paragraph (3) of this subsection. These criteria are not required for a closed window visit, an end-of-life visit, or an essential caregiver visit as defined in subsections (a)(1), (4), and (6) of this section. If an intermediate care facility fails to comply with the requirements of this section, HHSC may impose licensure remedies in accordance with Subchapter H of this chapter (relating to Enforcement).

(1) A facility may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the facility.

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

(A) There may be up to two permanently designated essential caregiver visitors per individual.

(B) Only one essential caregivers at a time may visit an individual.

(C) 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 and staff.

(D) 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.

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

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

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

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

(iii) the essential caregiver wearing a facemask or face covering, and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the facility; for individuals who rely on lip reading or facial cues for communication needs, the essential caregiver may use face masks with a clear screen over the mouth;

(iv) expectations regarding using only designated entrances and exits as directed, if applicable; and

(v) limiting visitation to the area designated by the facility in accordance with subparagraph (C) of this paragraph.

(G) An intermediate care facility must:

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

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

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

(iv) maintain documentation of the essential caregiver visitor's training as required in subparagraph (F)(ii) of this paragraph;

(v) 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;

(vi) 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

(vii) prevent visitation by the essential caregiver visitor if the essential caregiver has signs and symptoms of COVID-19 or an active COVID-19 infection.

(H) 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.

(3) To allow limited personal visitation in accordance with paragraph (7) of this subsection, an intermediate care facility must submit a completed HHSC Long-term Care Regulation (LTCR) form 2195, 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 2195 and a facility map, unless the previous visitation approval has been withdrawn, rescinded, or cancelled. To receive a facility visitation designation, an intermediate care facility must demonstrate:

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

(B) 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;

(C) 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 individuals who are COVID-19 negative;

(D) 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;

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

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

(G) if an intermediate care facility has had previous cases of COVID-19 in staff or individuals in the area, unit, wing, hall, or building that accommodates individuals who are COVID-19 negative, LTCR may conduct a verification survey to confirm the following:

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

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

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

(4) 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:

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

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

(C) if an intermediate care facility has had previous cases of COVID-19 in staff or individuals, LTCR may conduct a verification survey and confirm the following:

(i) all staff and individuals have fully recovered;

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

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

(5) An intermediate care facility that does not meet the criteria in paragraphs (3) or (4) of this subsection, to receive a visitation designation must:

(A) permit closed window visits and visits by persons providing critical assistance, including essential caregiver visits and end-of-life visits;

(B) develop and implement a plan describing the steps the facility intends to take to meet the visitation designation; and

(C) submit the plan to the Regional Director in the LTCR Region where the facility is located within five business days of submitting the form or of receiving notification from HHSC that the intermediate care facility was not approved for visitation designation.

(6) An intermediate care facility may request exemption from the requirements in this section that a facility with a visitation designation must allow certain personal visits. Facilities may not request, and HHSC will not approve, an exemption from closed window

visits or visits by persons providing critical assistance, including essential caregivers and end-of-life visits. If the intermediate care facility determines it is unable to meet one or more of the other visitation requirements of this section, the facility must request exemption from that requirement and explain its inability to meet the visitation requirement on the COVID-19 Status Attestation Form. HHSC will notify the intermediate care facility if a temporary exemption for a specific visit type is granted and the time period for exemption.

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

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

(B) infection control precautions; and

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

(8) Except if approved by HHSC for an exemption under paragraph (6) of this subsection, an intermediate care facility with a facility visitation designation must 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, and all other visitation types as specified:

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

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

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

(D) 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 facility separated from other individuals. The facility must limit the movement of the visitor through the facility to ensure interaction with other individuals is minimized.

(E) 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.

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

(G) The facility 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 facility 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.

(H) Cleaning and disinfecting the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit. The facility must schedule visits as necessary to allow time for sanitization between visits.

(I) The facility 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.

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

(K) A 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.

(L) 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.

(9) The following requirements apply to vehicle parades.

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

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

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

(D) The facility must encourage individuals to wear a facemask or face covering over both the mouth and nose, if tolerated, throughout the visit.

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

(A) 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 facility or contact between personal visitors and other individuals.

(B) 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.

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

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

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

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

(i) 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 (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 on open.texas.gov; and

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

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

(1) A salon services visit may be permitted for all individuals with COVID-19 negative status

(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 persons in the facility.

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

(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 facility;

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

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

(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) document the identity of each salon services visitor in the facility's records and verify the identity of the salon services visitor;

(F) 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

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

(7) 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.

(k) If, at any time after facility visitation designation is approved by HHSC, the area, unit, wing, hall, or building accommodating individuals who are COVID-19 negative, or facility-wide for small intermediate care facilities that received visitation designation in accordance with subsection (h)(5) of this section, experiences an outbreak of COVID-19, the facility must notify the Regional Director in the LTRC Region where the facility is located that the area, unit, wing, hall, building or facility no longer meets visitation criteria, and all visit types authorized under the facility's visitation designation, including outdoor visits, open window visits, vehicle parades, and indoor plexiglass visits, must be cancelled until the area, unit, wing, hall, building or facility meets the criteria described in subsection (h)(4) or (5) of this section and visitation approval is provided by HHSC.

(l) 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).

(m) 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 facility, the 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 April 23, 2021.

TRD-202101639

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: April 23, 2021

Expiration date: August 20, 2021

For further information, please call: (512) 438-3161



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

26 TAC §553.2003

The Executive Commissioner of the Texas 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 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. 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 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 require 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 Texas 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 §247.025 and §247.026 require the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 247 and to adopt rules prescribing minimum standards to protect the health and safety of assisted living facility 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 personal visitor and a resident during which the resident and personal visitor are separated by a closed window and the personal visitor does not enter the facility.

(2) COVID-19 negative--The status of a person who has either tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus in the last 14 days.

(3) COVID-19 positive--The status of a person who has tested positive for COVID-19 and does not yet meet 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 a resident who is receiving hospice services or who is at or near the end of life, with or without receiving hospice services, or whose prognosis does not indicate recovery. An end-of-life visit is permitted for all residents at or near the end of life.

(5) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, clergy member, private per-

sonal caregiver, or court-appointed guardian, who is at least 18 years old and has been designated by the resident or legal representative.

(6) Essential caregiver visit--A personal visit between a resident and an essential caregiver. An essential caregiver visit is permitted for all residents with any COVID-19 status.

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

(8) Indoor visit--A personal visit between a resident and one or more personal visitors that occurs in-person in a dedicated indoor space.

(9) Open window visit--A personal visit between a resident and a personal visitor 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, and family members or friends of residents at the end of life, and designated essential caregivers.

(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) 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.

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

(16) PPE--Personal protective equipment.

(17) Providers of essential services--Contract doctors or nurses, home health and hospice workers, health care professionals, contract professionals, and clergy members and spiritual counselors, whose services are necessary to ensure resident health and safety.

(18) Salon services visit--A personal visit between a resident and a salon services visitor.

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

(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 a resident and one or more personal visitors, during which the resident remains outdoors on the facility's property and a personal visitor drives past in a vehicle.

(b) Visitors, except for essential caregivers, may be any age. Visitors under the age of two are exempt from all requirements related to wearing masks described in this section.

(c) An assisted living facility must screen all visitors prior to allowing them to enter the facility in accordance with subsection (d) of this section, except emergency services personnel entering the facility or facility campus in an emergency. 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 facility and reschedule the visit:

(1) fever, defined as a temperature of 100.4 Fahrenheit and above, or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) other signs or symptoms of COVID-19, including chills, new or worsening 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 CDC in Symptoms of Coronavirus at [cdc.gov](https://www.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, regardless of whether the person is fully vaccinated; or

(5) has tested positive for COVID-19 in the last 10 days.

(e) An assisted living facility must allow persons providing critical assistance, including essential caregivers, and persons with legal authority to enter to enter the facility if they pass the screening in subsection (d) of this section.

(f) A person providing critical assistance who has had contact with a person with COVID-19 positive or COVID-19 unknown status, but does not meet the CDC definition of close contact or unprotected exposure, must not be denied entry to the facility unless the person providing critical assistance does not pass the screening criteria described in subsection (d)(1) - (3) and (5) of this section, or any other screening criteria based on CDC guidance.

(g) If the facility has offered a complete series of a one- or two-dose COVID-19 vaccine to residents and staff and documented each resident's choice to vaccinate or not vaccinate, the facility must allow essential caregiver visits, end-of-life visits, indoor visits, and outdoor visits as required in this subsection. If a facility fails to comply with the requirements of this subsection, HHSC may take action in accordance with Subchapter H of this chapter (relating to Enforcement).

(1) A facility may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the facility.

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

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

(B) Up to two essential caregivers may visit a resident at the same time.

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

(D) 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.

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

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

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

(ii) training each essential caregiver on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) a requirement that the essential caregiver must wear a facemask or face covering and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the facility;

(iv) expectations regarding using only designated entrances and exits as directed, if applicable; and

(v) limiting visitation to the area designated by the facility in accordance with subparagraph (C) of this paragraph.

(G) An assisted living facility must:

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

(ii) approve the essential caregiver's facemask or face covering and any other appropriate PPE recommended by CDC guidance and the facility's policy, or provide an approved facemask or face covering and other appropriate PPE;

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

(iv) maintain documentation of the essential caregiver's training as required in subparagraph (F)(ii) of this paragraph;

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

(vi) 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

(vii) prevent visitation by the essential caregiver visitor if the essential caregiver visitor has signs and symptoms of COVID-19 or an active COVID-19 infection.

(H) 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.

(3) To permit indoor visitation an assisted living facility must:

(A) have separate areas, which include enclosed rooms such as bedrooms, or activities rooms, units, wings, halls, or buildings, designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status resident cohorts; and

(B) ensure separate staff are designated to work with only one resident cohort and the designation does not change from one day to another.

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

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

(B) infection control precautions; and

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

(5) The following limits apply to all visitation allowed under this subsection.

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

(B) Except as provided in subparagraph (C) of this paragraph, indoor visits and outdoor visits are permitted only for residents who are COVID-19 negative.

(C) Essential caregiver visits and end-of-life visits are permitted for residents who have COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(D) A resident may choose to have close or personal contact with their visitor during the visit. The visitor must maintain physical distancing between themselves and all other persons in the facility.

(E) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control measures, including the resident's room. The facility must limit the movement of the visitor through the facility to ensure interaction with other persons in the facility is minimized.

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

(G) The facility must encourage the resident to wear a facemask or face covering over both the mouth and nose, if tolerated, throughout the visit. The resident may remove their facemask or face covering to eat or drink during the visit.

(H) A facility must ensure equal access by all residents to visitors and essential caregivers.

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

(J) A facility must ensure a comfortable and safe outdoor visitation area for outdoor visits, considering outside air temperature and ventilation.

(K) A facility must provide hand washing stations, or hand sanitizer, to the visitor and resident before and after visits.

(L) The visitor and the resident must practice hand hygiene before and after the visit.

(h) If the facility has not offered a complete series of a one- or two-dose COVID-19 vaccine to residents, the facility must allow limited personal visitation as described in this subsection upon meeting

the qualifications described in paragraph (3) of this subsection. These criteria are not required for a closed window visit, an end-of-life visit, or an essential caregiver visit as defined in subsection (a)(1), (4), and (6) of this section. If a facility fails to comply with the requirements of this subsection, HHSC may take action in accordance with Subchapter H of this chapter (relating to Enforcement).

(1) A facility may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the facility.

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

(A) There may be up to two permanently designated essential caregivers per resident.

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

(C) 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 and staff.

(D) 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.

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

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

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

(ii) training each essential caregiver on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) a requirement that the essential caregiver must wear a facemask or face covering and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the facility;

(iv) expectations regarding using only designated entrances and exits as directed, if applicable; and

(v) limiting visitation to the area designated by the facility in accordance with subparagraph (C) of this paragraph.

(G) An assisted living facility must:

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

(ii) approve the essential caregiver visitor's face-mask or face covering and any other appropriate PPE recommended by CDC guidance and the facility's policy, or provide an approved facemask or face covering and other appropriate PPE;

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

(iv) maintain documentation of the essential caregiver's training as required in subparagraph (F)(ii) of this paragraph;

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

(vi) 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 verified; and

(vii) prevent visitation by the essential caregiver visitor if the essential caregiver has signs and symptoms of COVID-19 or active COVID-19 infection.

(H) 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.

(3) To allow limited personal visitation in accordance with paragraph (8) of this subsection, a facility must submit a completed HHSC Long-term Care Regulation (LTCR) form 2196, COVID-19 Status Attestation form, including a facility map indicating which areas 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 2196 and a facility map, unless the previous visitation approval has been withdrawn, rescinded, or cancelled. To receive a facility visitation designation, an assisted living facility must demonstrate that:

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

(B) 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;

(C) 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 residents who are COVID-19 negative;

(D) 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;

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

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

(G) if an assisted living facility has had previous cases of COVID-19 in staff or residents in the area, unit, wing, hall, or building that accommodates residents who are COVID-19 negative, LTCR may conduct a verification survey to confirm the following:

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

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

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

(4) 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:

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

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

(C) if an assisted living facility has had previous cases of COVID-19 in staff or residents, LTCR may conduct a verification survey and confirm the following:

(i) all staff and residents have fully recovered;

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

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

(5) An assisted living facility that does not meet the criteria in paragraphs (3) or (4) of this subsection to receive a visitation designation, must:

(A) permit closed window visits and visits by persons providing critical assistance, including essential caregiver visits and end-of-life visits;

(B) develop and implement a plan describing the steps the facility intends to take in order to meet the criteria; and

(C) submit the plan to the Regional Director in the LTCR Region where the facility is located within five business days of submitting the form or of receiving notification from HHSC that the facility was not approved for visitation designation.

(6) An assisted living facility may request exemption from requirements of this section that a facility with a visitation designation allow certain personal visits. Facilities may not request, and HHSC will not approve, an exemption from closed window visits or visits by persons providing critical assistance, including essential caregivers and end-of-life visits. If the assisted living facility determines it is unable to meet one or more of the other visitation requirements of this section, the facility must request exemption from that requirement and explain its inability to meet the visitation requirement on the COVID-19 Status Attestation Form. HHSC will notify the assisted living facility if a temporary exemption for a specific visit type is granted and the time period for exemption.

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

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

(B) infection control precautions; and

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

(8) Except if approved by HHSC for an exemption under paragraph (6) of this subsection, an assisted living 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 requirements apply to all visita-

tion required under this subsection, and other visitation types as specified:

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

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

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

(D) 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 resident's room or other area of the facility separated from other residents. The facility must limit the movement of the visitor through the facility to ensure interaction with other residents is minimized.

(E) 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.

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

(G) The facility must remind personal visitors and residents 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 facility must 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.

(H) Cleaning and disinfecting the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit. The facility must schedule visits as necessary to allow time for sanitization between visits.

(I) The facility 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.

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

(K) A 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.

(L) 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.

(9) The following requirements apply to vehicle parades.

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

(B) The facility must encourage physical distancing of at least six feet between residents throughout the parade.

(C) The facility must prohibit residents from being closer than 10 feet to the vehicles for safety reasons.

(D) The facility must encourage residents to wear a facemask or face covering over both the mouth and nose, if tolerated, throughout the parade.

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

(A) 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 facility and contact between personal visitors and other residents.

(B) 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.

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

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

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

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

(i) 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 on website: open.texas.gov; and

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

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

(1) A salon services visit may be permitted for all residents with COVID-19 negative status.

(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 persons in the facility.

(3) Salon services visitors do not have to maintain physical distancing between themselves and each resident they are visiting, but they must maintain physical distancing between themselves and all other persons in the facility.

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

(5) The 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 facility.

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

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

(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) document the identity of each salon services visitor in the facility's records and verify the identity of the salon services visitor; and

(F) 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

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

(7) 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.

(k) 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 (h)(4) 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 visit types authorized under the facility's visitation designation, including outdoor visits, open window visits, vehicle parades, and indoor plexiglass visits, must be cancelled until the area, unit, wing, hall, building or facility meets the criteria described in subsection (h)(3) or (4) of this section.

(l) 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).

(m) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another ap-

plicable authority, that is more restrictive than this rule or any minimum standard relating to a facility, the 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 April 23, 2021.

TRD-202101637

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: April 23, 2021

Expiration date: August 20, 2021

For further information, please call: (512) 438-3161



CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION SUBCHAPTER CC. COVID-19 EMERGENCY RULE

26 TAC §554.2803

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 554, Nursing Facility Requirements for Licensure and Medicaid Certification, new §554.2803, 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 as well as the new requirements for visitation of nursing facility residents provided by the Centers for Medicare & Medicaid Services (CMS) in Memorandum QSO-20-39-NH, as revised March 10, 2021. 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 allow 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 Texas Health and Safety Code Chapter 242.

§554.2803. 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) 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.

(2) 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.

(3) End-of-life visit--A personal visit between a visitor and a resident who is receiving hospice services; who is at or near end of life, with or without receiving hospice services; or whose prognosis does not indicate recovery. An end-of-life visit is permitted in all facilities and for all residents at or near the end of life.

(4) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, clergy member, private personal caregiver, or court appointed guardian, who is at least 18 years old and has been designated by the resident or legal representative.

(5) Essential caregiver visit--A personal visit between a resident and a designated essential caregiver as described in subsection (h) of this section. An essential caregiver visit is permitted in all facilities for all residents.

(6) 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.

(7) Fully-vaccinated--A person who received the second dose in a two-dose COVID-19 vaccination series or received one dose of a single-dose COVID-19 vaccination and it has been at least 14 days since receiving the vaccination.

(8) Indoor visit--A personal visit between a resident and one or more personal visitors that occurs in-person in a dedicated indoor space.

(9) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either paid or unpaid staff, or one or more laboratory confirmed facility-acquired cases of COVID-19 identified in a resident.

(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 (h) 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) PPE--Personal protective equipment.

(14) Providers of essential services--Contract doctors, contract nurses, home health and hospice workers, health care professionals, contract professionals, clergy members and spiritual counselors, and individuals operating under the authority of a local intellectual and developmental disability authority, local mental health authority, or local behavioral health authority, 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 (p) of this section.

(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.

(b) All nursing facilities, including licensed-only facilities, must comply with the COVID-19 testing requirements specified by 42 CFR §483.80(h).

(c) Visitors, except for essential caregivers, may be any age. Visitors under the age of two are exempt from all requirements related to wearing masks described in this section.

(d) A nursing facility must screen all visitors prior to allowing them to enter the facility, except emergency services personnel entering the facility or facility campus in an emergency. 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.

(e) 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](https://www.cdc.gov);

(4) close 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, regardless of the visitor's vaccination status; or

(5) has tested positive for COVID-19 in the last 10 days.

(f) A nursing facility must allow persons providing critical assistance, including essential caregivers, and persons with legal authority, to enter the nursing facility if they pass the screening in subsection (e) of this section.

(g) A person providing critical assistance who has had contact with an individual with COVID-19 positive or COVID-19 unknown status, but does not meet the CDC definition of close contact or unprotected exposure, must not be denied entry to the nursing facility unless the person providing critical assistance does not pass the screening criteria described in subsection (e)(1) - (3) and (5) of this section, or any other screening criteria based on CDC guidance.

(h) A nursing facility may not require a personal visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the facility.

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

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

(2) Up to two essential caregivers may visit a resident at the same time.

(3) 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.

(4) Essential caregiver visitors do not have to maintain physical distancing between themselves and the resident they are visiting but must maintain physical distancing of at least six feet between themselves and all other residents and staff.

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

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

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

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

(C) 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;

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

(E) limiting visitation to the area designated by the facility in accordance with paragraph (3) of this subsection.

(7) A 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 (6)(B) of this subsection;

(E) 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; and

(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 resident being visited; and

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

(8) An essential caregiver must not participate in visits if the essential caregiver has signs and symptoms of COVID-19 or an active COVID-19 infection.

(9) 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.

(j) A nursing facility must allow essential caregiver visits, end-of-life visits, indoor visits, and outdoor visits as required by this section. If a nursing facility fails to comply with the requirements of this section, HHSC may impose licensure remedies in accordance with Subchapter V of this chapter.

(k) To permit indoor visitation, a nursing facility must:

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

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

(l) A nursing facility that meets the requirements of subsection (k) of this section to permit indoor visits and has at least one confirmed COVID-19 case in the last 14 consecutive days in staff working in the area, unit, wing, hall, or building that accommodates residents who are COVID-19 negative, or at least one confirmed facility-acquired case in residents in the COVID-19 negative area, unit, wing, hall, or building may not permit indoor visitation, not including essential caregiver and end-of-life visits, until all of the following conditions are met:

(1) outbreak testing is conducted in accordance with 42 CFR §483.80(h);

(2) the first round of outbreak testing revealed no additional COVID-19 cases in other areas, units, wings, halls, or buildings that accommodate residents who are COVID-19 negative; and

(3) indoor visitation is suspended for the affected area, unit, wing, hall, or building that accommodates residents who are COVID-19 negative until the facility meets the criteria to discontinue outbreak testing.

(m) 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 of 10 percent or lower must permit essential caregiver visits, end-of-life visits, outdoor visits, and indoor visits in accordance with this section.

(2) A nursing facility located in a county with a positivity rate greater than 10 percent and at least 70 percent of the residents in the facility are fully vaccinated, must permit essential caregiver visits, end-of-life visits, outdoor visits, and indoor visits in accordance with this section.

(3) A nursing facility located in a county with a positivity rate greater than 10 percent and fewer than 70 percent of the residents in the facility are fully vaccinated, must:

(A) limit indoor visits, not including essential caregiver and end-of-life visits, to fully-vaccinated residents with COVID-19 negative status; and

(B) permit outdoor visits, end-of-life visits, and essential caregiver visits in accordance with this section.

(n) 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).

(o) The following limits apply to all visitation allowed under this section:

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

(2) Except as provided in subsection (m)(3)(A) of this section and in paragraph (3) of this subsection, indoor visits and outdoor visits are permitted only for residents who are COVID-19 negative.

(3) Essential caregiver visits and end-of-life visits are permitted for residents who have COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(4) A fully-vaccinated resident wearing a well-fitting face covering or facemask may choose to have close or personal contact with their visitor during an indoor or outdoor visit. A resident who is not fully-vaccinated and their personal visitor must maintain physical distance during an indoor visit and an outdoor visit. Essential caregiver visitors and end-of-life visitors do not have to maintain physical distancing between themselves and the resident they are visiting. A personal visitor, essential caregiver, and end-of-life visitor must maintain physical distancing of at least six feet between themselves and all other persons in the facility.

(5) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control practices, including the resident's room. The nursing facility must limit the movement of the visitor through the facility to ensure interaction with other residents is minimized.

(6) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit and while in the nursing facility.

(7) A resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit. A resident may remove their facemask or face covering to eat or drink during the visit.

(8) A nursing facility must ensure equal access by all residents to visitors and essential caregivers.

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

(10) A nursing facility must ensure a comfortable and safe outdoor visiting area for outdoor visits, considering outside air temperatures and ventilation.

(11) A nursing facility must provide hand-washing stations or hand sanitizer to the visitor and resident before and after visits.

(12) The visitor and the resident must practice hand hygiene before and after the visit.

(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 on website: <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) A salon services visit may be permitted for all residents with COVID-19 negative status.

(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 of at least six feet between themselves and all other persons in the facility.

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

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

(C) 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;

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

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

(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)(B) of this subsection;

(E) 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

(F) 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 each resident being visited; and

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

(7) 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 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 April 23, 2021.

TRD-202101635

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: April 23, 2021

Expiration date: August 20, 2021

For further information, please call: (512) 438-3161



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 Agen-

cies, Subchapter I, Response to COVID-19 and Pandemic-Level Communicable Disease, new §558.950, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in a hospice inpatient unit. As authorized by Texas Government Code §2001.034, HHSC 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. 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 Hospice Inpatient Units COVID-19 Response--Reopening Visitation.

To protect clients admitted to a hospice inpatient unit and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require limited indoor and outdoor visitation in a hospice inpatient unit. 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 §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 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 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 142 and to adopt rules prescribing minimum standards to protect the health and safety of clients admitted to hospice inpatient units.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 142, concerning Home and Community Support Services Agencies.

§558.950. Hospice Inpatient Units COVID-19 Response--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 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--The status of a person who has either 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 client receiving hospice services who is at or near the end of life and in the later stages of a terminal illness. 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, clergy member, 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 an essential caregiver. An essential caregiver visit is permitted in all hospice inpatient units for all clients with any COVID-19 status.

(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) Family education visit--A visit between a family education visitor and a client who is in the hospice inpatient unit for an intensive stay for the purpose of hospice staff educating the family education visitor on proper equipment utilization or care of the client after discharge from the unit.

(9) Family education visitor--An individual (who may or may not be an essential caregiver) designated by a client who provides regular care and support to the client while the client is in the hospice inpatient unit for an intensive stay for the purpose of learning proper equipment utilization or care of the client after discharge from the unit.

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

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

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

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

(14) 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, family education visitors, and designated essential caregivers.

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

(16) 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.

(17) 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.

(18) PPE--Personal protective equipment.

(19) Providers of essential services--Contract doctors or nurses, hospice employees and contractors, hospice physicians, nurses, hospice aides, social workers, therapists, spiritual counselors, contract professionals, clergy members and spiritual counselors whose services are necessary to ensure client health and safety.

(20) Salon services visit--A personal visit between a client and a salon services visitor.

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

(22) 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.

(23) 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's property and a personal visitor drives past in a vehicle.

(b) Visitors, except for essential caregivers, may be any age. Visitors under the age of two are exempt from all requirements related to wearing masks described in this section.

(c) A hospice agency operating a hospice inpatient unit must screen all visitors prior to allowing them to enter the hospice inpatient unit in accordance with subsection (d) of this section, except emergency services personnel entering the unit or hospice inpatient unit campus in an emergency. 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.

(d) 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, or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) other signs or symptoms of COVID-19, including chills, new or worsening 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 CDC in Symptoms of Coronavirus at [cdc.gov](https://www.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, regardless of whether the person is fully vaccinated; or

(5) has tested positive for COVID-19 in the last 10 days.

(e) A hospice agency operating a hospice inpatient unit must allow persons providing critical assistance, including essential caregivers and family education visitors and persons with legal authority

to enter to enter the unit if they pass the screening in subsection (d) of this section.

(f) A person providing critical assistance who has had contact with a person with COVID-19 positive or COVID-19 unknown status, but does not meet the CDC definition of close contact or unprotected exposure, must not be denied entry to the hospice inpatient unit unless the person providing critical assistance does not pass the screening criteria described in subsection (d)(1) - (3) and (5) of this section, or any other screening criteria based on CDC guidance.

(g) If the hospice agency has offered a complete series of a one- or two-dose COVID-19 vaccine to clients and staff and documented each client's choice to vaccinate or not vaccinate, the hospice agency operating the hospice inpatient unit must allow essential caregiver visits, family education visits, end-of-life visits, indoor visits, and outdoor visits as required in this subsection. If a hospice inpatient unit fails to comply with the requirements of this subsection, HHSC may take action in accordance with §558.601 of this chapter (relating to Enforcement Actions). In accordance with §558.602 of this chapter (relating to Administrative Penalties), HHSC may assess an administrative penalty of \$500 without providing the hospice agency with an opportunity to correct the violation if HHSC determines that the hospice agency willfully violated a client's right to visitation.

(1) A hospice agency operating a hospice inpatient unit may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the facility.

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

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

(B) Up to two essential caregivers may visit a client at the same time.

(C) The visit may occur outdoors, in the client's bedroom, or in another area in the hospice inpatient unit that limits the visitor movement through the unit and interaction with other clients, family education visitors, and staff.

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

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

(F) The hospice agency must develop and enforce essential caregiver visitation policies and procedures, which include:

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

(ii) training each essential caregiver on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) a requirement that the essential caregiver must wear a facemask or face covering and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy while in the hospice inpatient unit;

(iv) expectations regarding using only designated entrances and exits as directed, if applicable; and

(v) limiting visitation to the area designated by the hospice agency in accordance with subparagraph (C) of this paragraph.

(G) The hospice agency must:

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

(ii) approve the essential caregiver's facemask or face covering and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, or provide an approved facemask and other appropriate PPE;

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

(iv) maintain documentation of the essential caregiver's training as required in subparagraph (F)(ii) of this paragraph;

(v) maintain documentation of the identity of each essential caregiver in the client's record and verify the identity of the essential caregiver at the time of each visit; and

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

(vii) prevent visitation by the essential caregiver visitor if the essential caregiver visitor has signs and symptoms of COVID-19 or an active COVID-19 infection.

(H) 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.

(3) To permit indoor visitation a hospice agency operating a hospice inpatient unit must:

(A) have separate areas, which include enclosed rooms such as bedrooms or activities rooms, units, wings, halls, or buildings, designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status client and family education visitor cohorts; and

(B) ensure separate staff are designated to work with only one client and family education visitor cohort and the designation does not change from one day to another.

(4) A hospice agency must provide instructional signage throughout the unit and proper visitor education regarding:

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

(B) infection control precautions; and

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

(5) The following limits apply to all visitation allowed under this section.

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

(B) Except as provided in subparagraph (C) of this paragraph, indoor visits and outdoor visits are permitted only for clients who are COVID-19 negative.

(C) Essential caregiver visits and end-of-life visits are permitted for clients who have COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(D) A client may choose to have close or personal contact with their visitor during the visit. The visitor must maintain physical distancing between themselves and all other persons in the hospice inpatient unit.

(E) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control measures, including the client's room. The hospice agency must limit the movement of the visitor through the unit to ensure interaction with other persons in the unit is minimized.

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

(G) The hospice agency must encourage the client to wear a facemask over both the mouth and nose, if tolerated, throughout the personal visit. The client may remove their facemask to eat or drink during the personal visit.

(H) A hospice agency must ensure equal access by all clients to visitors and essential caregivers.

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

(J) A hospice agency operating a hospice inpatient unit must ensure a comfortable and safe outdoor visitation area for outdoor visits, considering outside air temperature and ventilation.

(K) A hospice agency operating a hospice inpatient unit must provide hand washing stations, or hand sanitizer, to the visitor and client before and after visits.

(L) The visitor and the client must practice hand hygiene before and after the visit.

(6) The following applies to family education visits under this section.

(A) The hospice agency operating a hospice inpatient unit must develop and enforce family education visit policies and procedures which must address the requirements in this subsection.

(B) A hospice inpatient unit client may designate up to three family education visitors. An individual may be designated as both a family education visitor and an essential caregiver.

(C) A family education visit is permitted for clients who are COVID-19 negative, COVID-19 positive, and clients with unknown COVID-19 status.

(D) The hospice agency must provide appropriate PPE to the family education visitor for use during the entirety of each family education visit, including provision of replacement PPE if the equipment becomes soiled, damaged, or otherwise ineffective.

(E) A hospice agency operating a hospice inpatient unit may not require a family education visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the hospice inpatient unit.

(F) The hospice agency may not require COVID-19 vaccination prior to family education visits.

(G) The hospice agency must develop a written agreement that the family education visitor understands and agrees to follow the applicable policies, procedures, and requirements.

(H) The hospice agency must provide training for each family education visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette.

(I) The family education visitor must wear a surgical or N95 respirator, and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, while in the hospice inpatient unit.

(J) The family education visitor must:

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

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

(iii) not participate in visits if the designated family education visitor has signs and symptoms of COVID-19, active COVID-19 infection, or other communicable diseases.

(K) The hospice agency may cancel the family education visit if the family education visitor fails to comply with the agency's policy regarding visitation or other applicable requirements in this section.

(L) If the hospice agency must cancel the family education visit, the hospice agency must discuss the situation with the interdisciplinary team and arrange for family education at the client's home or independent location in accordance with §558.288 of this chapter (relating to Coordination of Services) and the client's plan of care.

(h) If the hospice agency operating a hospice inpatient unit has not offered a complete series of a one- or two-dose COVID-19 vaccine to clients and staff, the hospice must seek a visitation designation and allow limited personal visitation in accordance with this subsection. A visitation designation is not required for, and a hospice inpatient unit must allow, closed window visits, end-of-life visits, family education visits and essential caregiver visits. If a hospice inpatient unit fails to comply with the requirements of this subsection, HHSC may take action in accordance with §558.601 of this chapter. In accordance with §558.602 of this chapter, HHSC may assess an administrative penalty of \$500 without providing the hospice agency with an opportunity to correct the violation.

(1) A hospice agency may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the hospice inpatient unit.

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

(A) There may be up to two permanently designated essential caregivers per client.

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

(C) The essential caregiver visit may occur outdoors, in the client's bedroom, or in another area in the hospice inpatient unit that limits visitor movement through the inpatient unit and interaction with other clients, family education visitors, and staff.

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

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

(F) The hospice agency must develop and enforce essential caregiver visitation policies and procedures, which include:

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

(ii) training each essential caregiver on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) a requirement that the essential caregiver must wear a facemask and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy while in the unit;

(iv) expectations regarding using only designated entrances and exits as directed, if applicable; and

(v) limiting visitation to the area designated by the hospice agency.

(G) A hospice agency operating an inpatient hospice unit must:

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

(ii) approve the essential caregiver visitor's facemask and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, or provide an approved facemask and other appropriate PPE;

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

(iv) maintain documentation of the essential caregiver's training;

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

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

(vii) prevent visitation by the essential caregiver if the essential caregiver has signs and symptoms of COVID-19 or an active COVID-19 infection.

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

(3) To allow limited personal visitation, a hospice agency operating a hospice inpatient unit must submit a completed HHSC Long-term Care Regulation (LTCR) Form 7004, COVID-19 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. A hospice inpatient unit with previous approval for visitation does not have to submit Form 7004 and a hospice inpatient unit map, unless the previous visitation approval has been withdrawn, rescinded, or cancelled. To receive a visitation designation, a hospice agency must demonstrate that:

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

(B) 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;

(C) 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;

(D) 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;

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

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

(G) if 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, LTCR may conduct a verification survey to confirm the following:

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

(ii) the hospice agency has adequate staffing to continue care for all clients and administer visits permitted by this section; and

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

(4) A hospice inpatient unit that does not meet the criteria in paragraph (3) of this subsection to receive a visitation designation, must:

(A) permit closed window visits and visits by persons providing critical assistance, including essential caregiver visits and end-of-life visits;

(B) develop and implement a plan describing the steps the hospice agency intends to take in order to meet the criteria; and

(C) submit the plan to the Regional Director in the LTCR Region where the hospice agency is located within five business days of submitting the form or of receiving notification from HHSC that the hospice agency was not approved for visitation designation.

(5) A hospice agency operating a hospice inpatient unit may request exemption from requirements of this section that a hospice inpatient unit with a visitation designation allow certain personal visits. A hospice agency operating an inpatient unit may not request, and HHSC will not approve, an exemption from closed window visits or visits by persons providing critical assistance, including essential caregivers, family education visitors, and end-of-life visits. If the hospice agency determines it is unable to meet one or more of the other visitation requirements of this section, the hospice agency must request exemption from that requirement and explain its inability to

meet the visitation requirement on the COVID-19 Status Attestation Form. HHSC will notify the hospice agency if a temporary exemption for a specific visit type is granted and the time period for exemption.

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

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

(B) infection control precautions; and

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

(7) A hospice agency operating a hospice inpatient unit with visitation designation must allow outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits involving clients and personal visitors. The following requirements apply to all visitation required under this subsection, and other visitation types as specified:

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

(B) Closed window visits, end-of-life visits, and essential caregiver 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 agency.

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

(D) 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, family education visitors, 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 visitors through the unit to ensure interaction with other clients and family education visitors is minimized.

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

(F) The client must wear a facemask over both the mouth and nose, if tolerated, throughout the visit.

(G) The hospice inpatient unit staff must remind personal visitors and clients 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 hospice agency must limit the number of visitors and clients in the visitation area as needed to ensure physical distancing is maintained. Essential caregiver, family education 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.

(H) Cleaning and disinfecting the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit. The hospice inpatient unit must schedule visits as necessary to allow time for sanitization between visits.

(I) The hospice inpatient unit 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.

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

(K) A hospice inpatient unit 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.

(L) 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.

(8) The following requirements apply to vehicle parades.

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

(B) The hospice inpatient unit must encourage physical distancing of at least six feet between clients throughout the parade.

(C) The hospice inpatient unit must prohibit clients from being closer than 10 feet to the vehicles for safety reasons.

(D) The hospice inpatient unit must encourage clients to wear a facemask or face covering over both the mouth and nose, if tolerated, throughout the parade.

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

(A) 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 hospice inpatient unit and contact between personal visitors and other clients.

(B) Prior to using the booth, the hospice inpatient unit must submit for approval 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 hospice inpatient unit is located and must receive approval from HHSC.

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

(D) The client must wear a facemask over both the mouth and nose, if tolerated, throughout the visit.

(E) The personal visitor must wear a facemask over both the mouth and nose throughout the visit.

(F) The hospice agency shall limit the number of visitors and clients in the visitation area as needed to ensure physical distancing.

(i) A hospice agency operating a hospice inpatient unit 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 (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 on website: open.texas.gov; and

(3) the requirements for visitation are met.

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

(1) A salon services visit may be permitted for all clients with COVID-19 negative status.

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

(3) Salon services visitors do not have to maintain physical distancing between themselves and each client for whom they are providing services, but they must maintain physical distancing between themselves and all other persons in the hospice inpatient unit.

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

(5) The client 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 hospice agency's policy while in the unit.

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

(F) limiting visitation to the area designated by the hospice agency.

(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 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;

(E) document the identity of each salon services visitor in the hospice inpatient unit's records and verify the identity of the salon services visitor; and

(F) 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

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

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

(k) If, at any time after the hospice agency's visitation designation is approved by HHSC, the area, unit, wing, hall, or building accommodating clients who are COVID-19 negative, experiences an outbreak of facility-acquired COVID-19, the hospice agency must notify the Regional Director in the LTRC Region where the hospice inpatient unit is located that the area, unit, wing, hall, building or hospice inpatient unit no longer meets visitation criteria, and all visit types authorized under the hospice agency's visitation designation, including outdoor visits, open window visits, vehicle parades, and indoor plexiglass visits, must be cancelled until the area, unit, wing, hall, building or hospice inpatient unit meets the criteria for such visitation.

(l) If a hospice agency operating a hospice inpatient unit fails to comply with a requirement of this section related to visitation or visitation designation, HHSC may rescind a visitation designation and take action in accordance with §558.601 of this chapter. In accordance with §558.602 of this chapter, HHSC may assess an administrative penalty of \$500 without providing the hospice agency with an opportunity to correct the violation.

(m) 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 April 23, 2021.

TRD-202101642

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: April 23, 2021

Expiration date: August 20, 2021

For further information, please call: (512) 438-3161



TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER A. GENERAL PROVISIONS

34 TAC §31.1

The Teacher Retirement System of Texas (TRS) adopts, on an emergency basis, amendments to §31.1, relating to Definitions, in Title 34, Part 3, of the Texas Administrative Code.

EXPLANATION AND JUSTIFICATION FOR THE EMERGENCY RULE

School districts, legislators, and other TRS stakeholders have reported to TRS that Texas schools face an emergency staffing

shortage for summer school this year. Specifically, as a result of widespread and severe learning loss caused by the COVID-19 pandemic, school districts have reported a greatly expanded need for summer school capacity and programming during Summer 2021. In addition to this expanded need for summer school, school districts also report a decrease in interest from current staff to continue teaching during the summer session after completing a full year of teaching through the COVID-19 pandemic. The combination of these factors has created a critical staffing shortage for school districts throughout Texas for Summer 2021.

Further, Texas remains in a declared state of disaster based on the COVID-19 pandemic. On March 13, 2020, the Governor of Texas issued a proclamation certifying that COVID-19 poses an imminent threat of disaster and declaring a state of disaster for all counties in Texas. In the proclamation, the Governor authorized the use of all available resources of state government and political subdivisions that are reasonably necessary to cope with this disaster, and the Governor has renewed the disaster declaration each month since March 2020, most recently on April 5, 2021.

In accordance with the resolution and order adopted by the TRS Board of Trustees on April 16, 2021, TRS finds that the critical staffing shortage faced by Texas school districts in conjunction with the unprecedented statewide learning loss caused by the COVID-19 pandemic presents imminent peril to the public health, safety, and welfare of the state of Texas. For this reason and pursuant to Government Code §2001.034, TRS adopts amended §31.1 on an emergency basis to assist Texas school districts with this critical staffing shortage and to expand their access to all available resources necessary to cope with the COVID-19 disaster.

The amendments to §31.1(b) revises the definition of "substitute" to include, for the purposes of employment after retirement, a service retiree employed by a school district on a temporary basis during the months of June 2021 through August 2021 if the employment is expected or contracted to end by no later than August 31, 2021 and is paid no more than the daily rate of pay set by the employer for non-retiree employees in the same or similar positions. The amendments also make other non-substantive, conforming changes to existing §31.1(b) to accommodate the formatting of the change.

While this revised definition is a departure from TRS' current definition of the term "substitute," TRS finds that the inherently seasonal and temporary nature of summer employment with a school district is similar to employment that already qualifies as substitute employment under current §31.1. Further, the revised definition is narrowly tailored to address the staffing emergency facing Texas school districts and justified and circumscribed by that emergency. TRS's actuary of record, Gabriel, Roeder, Smith & Company, has also determined that the amendments will not have a detrimental impact on the pension fund.

Pursuant to this amendment, a TRS service retiree that works for a Texas school district on a temporary basis during the Summer 2021 months will qualify as a "substitute" for the purposes of employment after retirement if the work is not expected to or contracted to extend beyond August 31, 2021 and is not paid more than non-retirees are paid for the same or similar temporary work. Because this employment will qualify as substitute employment, it will not be subject to the limits on one-half time employment prescribed by TRS rules or to surcharges under Government Code §825.4092. In addition, this change applies to TRS service retirees working in any position for a school district,

not only as a teacher, if that employment meets the requirements of the amended definition because school districts will also require sufficient support and auxiliary staff to implement their summer programs in addition to the necessary teaching staff.

This adopted amendments to §31.1 will become effective immediately upon filing with the Secretary of State pursuant to Government Code §2001.036 because, for the same reasons that TRS adopts this rule on an emergency basis, TRS finds that an imminent peril to the public health, safety, and welfare of Texas requires an immediate effective date. Though the expanded definition under amended §31.1(b) will not apply to the employment of a TRS service retiree until June 2021, school districts are already making hiring and staffing decisions for summer school. An immediate effective date will provide both school districts and TRS service retirees necessary notice and assurance that the amended rule will apply to employment this summer.

The adopted amendments will remain in effect for 120 days after filing with the Secretary of State and shall be extended to remain in effect for a period of up to 60 days to ensure that the adopted amendments remain in effect through August 31, 2021. Once the adopted amendments expire, Section 31.1 as adopted prior to this emergency rule shall become effective once again.

STATUTORY AUTHORITY

The emergency rule is adopted under the authority of Government Code §824.601(f), which authorizes the TRS Board of Trustees to adopt rules necessary to implement Subchapter G of Chapter 824, Government Code, relating to Loss of Benefits on Resumption of Service, and Government Code §824.602(j), which requires the TRS Board of Trustees to adopt rules regarding the employment of retirees as substitutes. In addition, the emergency rule is adopted on an emergency basis under the authority of Government Code §2001.034, which authorizes a state agency to adopt an emergency rule with no prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice, and Government Code §2001.036, which authorizes a state agency to adopt a rule that is effective immediately on filing with the secretary of state, or on a stated date less than 20 days after the filing date if the agency finds that an expedited effective date is necessary because of imminent peril to the public health, safety, or welfare.

CROSS-REFERENCE TO STATUTE

The adopted amendments to §31.1 implements Subchapter G of Chapter 824, Government Code, relating to Loss of Benefits on Resumption of Service and Government Code §825.4092, which relates to Employer Contributions for Employed Retirees.

§31.1. Definitions.

(a) School year--For purposes of employment after retirement, a twelve-month period beginning on September 1 and ending on August 31 of the calendar year.

(b) Substitute--For purposes of employment after retirement:[5]

(1) a person who serves on a temporary basis in the place of a current employee(s). A substitute may be paid no more than the daily rate of pay set by the employer. Effective September 1, 2016, a substitute includes a retiree who serves in a vacant position for no more than 20 days. A retiree may serve as a substitute in more than one vacant position each school year provided the retiree serves no more than 20 days in each vacant position. In no event may a retiree be considered a substitute while serving in a vacant position that was last

held by that retiree;[.] or [Service as a substitute that does not meet this definition is not eligible substitute service for purposes of an exception to forfeiture of annuity payments under §31.13 of this title (relating to Substitute Service).]

(2) a service retiree employed by a school district on a temporary basis during the months of June 2021 through August 2021 if the employment is expected or contracted to end by no later than August 31, 2021 and is paid no more than the daily rate of pay set by the employer for non-retiree employees in the same or similar positions.

(c) Third party entity--For purposes of employment after retirement, an entity retained by a Texas public educational institution to provide personnel to the institution who perform duties or provide services that employees of that institution would otherwise perform or provide.

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 April 26, 2021.

TRD-202101647

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Effective date: April 26, 2021

Expiration date: August 23, 2021

For further information, please call: (512) 542-6201



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, HHSC 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 Governors 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 Rules for Program Provider Response to COVID-19 and Home and Community-based Services (HCS) Expansion of Reopening Visitation.

To protect individuals receiving 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 and 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 Home and Community-based Services (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(d) 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) Physical distancing--Maintaining six feet of separation between persons and avoiding physical contact.

(6) 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.

(7) Provider of essential services--Contract doctors or nurses, home health and hospice workers, health care professionals, contract professionals, clergy members and spiritual counselors, guardianship specialists, advocacy professionals, 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.

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

(c) Visitors, except for essential caregivers, may be any age. Visitors under the age of two are exempt from all requirements related to wearing masks described in this section.

(d) Screening requirements.

(1) A program provider must screen all visitors and individuals outside of the residence prior to allowing them to enter, except emergency services personnel entering the property in an emergency. 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](https://www.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, regardless of whether the person is fully vaccinated, unless the visitor is seeking entry to provide critical assistance; or

(E) has tested positive for COVID-19 in the last 10 days.

(3) A program provider must allow persons providing critical assistance, including essential caregivers, and persons with legal authority to enter the residence if they pass the screening in paragraph (2) of this subsection.

(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.

(e) 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.

(f) 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 in the community whenever reasonably possible.

(5) Except in a host home/companion care home, a program provider must require staff to:

(A) wear a mask or cloth face covering over both the nose and mouth if not providing care to an individual with COVID-19;

(B) wear appropriate PPE as defined by CDC if providing care to an individual with COVID-19; and

(C) maintain physical distance as practicable.

(6) If an individual relies on lip reading or facial cues for communication needs, providers may:

(A) use face masks with a clear screen over the mouth;
or

(B) temporarily remove it during communication.

(7) Host home/companion care providers must wear appropriate PPE as defined by CDC and maintain physical distancing if providing care to an individual with COVID-19.

(8) 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).

(9) A program provider must monitor the health status of a staff person providing services under paragraph (8) 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.

(10) A program provider must isolate individuals with confirmed or probable COVID-19 in accordance with CDC guidance. The program provider should isolate the individual 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.

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

(g) 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.

(h) 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.

(i) 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 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.

(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) The program provider must train an individual on the risks of leaving the residence. The individual must be screened upon return in accordance with subsection (d) of this section.

(o) 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.

(p) If this emergency rule is more restrictive than any minimum standard relating to the HCS program, this emergency rule will prevail so long as this emergency rule is in effect.

(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 any minimum standard relating to the HCS 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 section 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--The status of an individual 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--The status of an individual 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 receiving hospice services or is at or near end of life, with or without receiving hospice services; or whose prognosis does not indicate recovery. An end-of-life visit is permitted for all individuals at or near the end of life.

(5) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, clergy member, 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 subsections (d)(1) and (e)(2) of this section. An essential caregiver visit is permitted for all individuals with any COVID-19 status.

(7) Individual--A person enrolled in the Home and Community-based Services (HCS) program.

(8) Indoor visit--A personal visit between an individual and one or more personal visitors that occurs in-person in a dedicated indoor space.

(9) 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.

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

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

(12) 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.

(13) 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.

(14) 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.

(15) 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.

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

(c) Visitors, except for essential caregivers, may be any age. Visitors under the age of two are exempt from all requirements related to wearing masks described in this section.

(d) If the program provider has offered a complete series of a one- or two-dose COVID-19 vaccine to individuals and staff and documented each individuals choice to vaccinate or not vaccinate, the program provider must allow essential caregiver visits, end-of-life visits, indoor visits, and outdoor visits as required in this section. If a program provider fails to comply with the requirements of this section, the Texas Health and Human Services Commission (HHSC) may take action in accordance with §9.171 of this subchapter (relating to HHSC Surveys and Residential Visits of a Program Provider) and §9.181 of this subchapter (relating to Administrative Penalties).

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

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

(B) Up to two essential caregiver visitors may visit an individual at the same time.

(C) The visit may occur outdoors, in the individuals bedroom, or in another area in the home that limits the essential caregiver visitors movement through the residence and interaction with other individuals and staff.

(D) 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.

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

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

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

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

(iii) a requirement that the essential caregiver visitor must wear a face mask and any other PPE in accordance with CDC guidance and the program providers policy while in the residence;

(iv) an exception that if an individual relies on lip reading or facial cues for communication needs, the essential caregiver may:

(I) use face masks with a clear screen over the mouth; or

(II) temporarily remove it during communication; and

(v) limiting visitation to the area designated by the program provider in accordance with subparagraph (C) of this paragraph.

(G) The program provider must:

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

(ii) approve the essential caregiver visitors face mask and any other PPE in accordance with CDC guidance and the program providers policy, or provide an approved face mask and other PPE;

(iii) maintain documentation of the essential caregiver visitors agreement to follow the applicable policies, procedures, and requirements;

(iv) maintain documentation of the essential caregiver visitors training as required in paragraph (1)(F)(ii) of this subsection;

(v) maintain documentation of the identity of each essential caregiver visitor in the individuals records and verify the identity of the essential caregiver visitor at the time of each visit;

(vi) 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

(vii) prevent visitation by the essential caregiver visitor if the essential caregiver has signs and symptoms of COVID-19, active COVID-19 infection.

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

(2) A program provider may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the residence.

(3) To permit indoor visitation, the program provider must have had no confirmed COVID-19 infections or suspected COVID-19 cases for at least 14 consecutive days among staff.

(4) The following limits apply to all visitation allowed under this section:

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

(B) Except as provided in subparagraph (C) of this paragraph, indoor visits and outdoor visits are permitted only for individuals who are COVID-19 negative.

(C) Essential caregiver visits and end-of-life visits are permitted for individuals who have COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(D) An individual may choose to have close or personal contact with their visitor during the visit. The visitor must maintain physical distancing of at least six feet between themselves and all other persons in the residence.

(E) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control measures, including the individuals room. The program provider must limit the movement of the visitor through the residence to ensure interaction with other persons in the residence is minimized.

(F) The visitor must wear a face mask or face covering over both the mouth and nose throughout the visit. For individuals who rely on lip reading or facial cues for communication needs, the visitor may use face masks with a clear screen over the mouth.

(G) The program provider must encourage the individual to wear a face mask or face covering over the both the mouth or nose, if tolerated, throughout the visit. The individual may remove their face mask or face covering to eat or drink during the visit.

(H) A program provider must ensure equal access by all individuals to visitors and essential caregivers.

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

(J) A program provider must ensure a comfortable and safe outdoor visitation area for outdoor visits, considering outside air temperature and ventilation.

(K) A program provider must provide hand washing stations, or hand sanitizer, to the visitor and individual before and after visits.

(L) The visitor and the individual must practice hand hygiene before and after the visit.

(e) If the program provider has not offered a complete series of a one- or two-dose COVID-19 vaccine the program provider may allow limited personal visitation as described in this subsection upon meeting the qualifications described in paragraph (3) of this subsection. These criteria are not required for a closed window visit, an end-of-life visit, or an essential caregiver visit as defined in subsection (b)(1), (b)(4), and (b)(6) of this section. If a program provider fails to comply with the requirements of this subsection, HHSC may take action in accordance with §9.171 of this subchapter and §9.181 of this subchapter.

(1) A program provider may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the residence.

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

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

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

(C) The visit may occur outdoors, in the individuals bedroom, or in another area in the home that limits the essential caregiver visitors movement through the residence and interaction with other individuals and staff.

(D) 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.

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

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

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

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

(iii) a requirement that the essential caregiver visitor must wear a face mask and any other PPE in accordance with CDC guidance and the program providers policy while in the residence;

(iv) an exception that if an individual relies on lip reading or facial cues for communication needs, providers may:

(I) use face masks with a clear screen over the mouth; or

(II) temporarily remove it during communication; and

(v) limiting visitation to the area designated by the program provider in accordance with subparagraph (C) of this paragraph.

(G) The program provider must:

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

(ii) approve the essential caregiver visitors face mask and any other PPE in accordance with CDC guidance and the program providers policy, or provide an approved face mask and other PPE;

(iii) maintain documentation of the essential caregiver visitors agreement to follow the applicable policies, procedures, and requirements;

(iv) maintain documentation of the essential caregiver visitors training as required in subparagraph (F)(ii) of this paragraph;

(v) maintain documentation of the identity of each essential caregiver visitor in the individuals records and verify the identity of the essential caregiver visitor at the time of each visit;

(vi) 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

(vii) prevent visitation by the essential caregiver visitor if the essential caregiver has signs and symptoms of COVID-19, active COVID-19 infection.

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

(3) To allow limited personal visitation, in accordance with paragraph (4) of this subsection, a program provider must complete and maintain in the residence HHSC attestation form that HHSC may request for verification, stating that:

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

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

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

(D) the program provider has a plan to respond to new confirmed or probable cases of COVID-19 in the residence; and

(E) 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.

(4) An attestation form is not required for a residence to conduct closed window visits, end-of-life visits, or essential caregiver visits, as defined in subsection (b)(1), (b)(4) and (b)(6) of this section.

(5) If, at any time after the attestation form is completed, the residence experiences an outbreak of COVID-19 as defined in subsection (b)(10) of this section, the attestation is no longer in effect, and all visitation allowed by paragraph (6) of this subsection must be cancelled. When the residence again meets the criteria described in paragraph (4) of this subsection, the program provider completes a new HHSC attestation form.

(6) 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.

(A) 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.

(B) Closed window visits, end-of-life visits, and essential caregiver 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.

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

(D) 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 individuals 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.

(E) 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. For individuals who rely on lip reading or facial cues for communication needs, the visitor may use face masks with a clear screen over the mouth.

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

(G) 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.

(H) 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.

(I) 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.

(J) 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.

(K) 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.

(L) 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.

(7) The following requirements apply to vehicle parades.

(A) Personal visitors must remain in their vehicles throughout the parade.

(B) The program provider must encourage physical distancing of at least six feet between individuals throughout the parade.

(C) The program provider must prohibit individuals from being closer than 10 feet to the vehicles for safety reasons.

(D) 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.

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

(A) 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.

(B) 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.

(f) 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.

Filed with the Office of the Secretary of State on April 23, 2021.

◆ ◆ ◆
**CHAPTER 47. PRIMARY HOME CARE,
COMMUNITY ATTENDANT SERVICES, AND
FAMILY CARE PROGRAMS**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40 Texas Administrative Code, Chapter 47 Primary Home Care, Community Attendant Services, and Family Care Programs, amendments to §47.25 and §47.65, concerning emergency rules in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Texas Government Code §2001.034, HHSC 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. 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 §47.25, Attendant Orientation, and §47.65, Supervisory Visits to decrease the risk of transmitting COVID-19 by reducing in-person contact.

To protect individuals receiving personal attendant services in the Primary Home Care (PHC), Community Attendant Services (CAS), and Family Care (FC) Programs and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency amendment in §47.25(b)(1)(C) to allow a supervisor to conduct an attendant's orientation by telephone or videoconferencing at the discretion of the supervisor at any location with or without the participation of the individual receiving attendant services, if the attendant meets one of the requirements described in §47.25(b)(1)(B). HHSC is also adopting an emergency amendment in §47.65(e) to allow a supervisor to conduct a supervisory visit by telephone, videoconferencing, or in-person at the discretion of the supervisor.

SUBCHAPTER C. STAFF REQUIREMENTS

40 TAC §47.25

STATUTORY AUTHORITY

These emergency amendments 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, authorizes the Executive Commissioner of HHSC to adopt rules governing the administration of federal funds to plan and direct the Medicaid program. Texas Human Resources Code §32.021, authorizes the Executive Commissioner of HHSC to adopt rules governing the proper and efficient operation of the Medicaid program.

The amendments implement Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

§47.25. Attendant Orientation.

(a) Orientation. In addition to the requirements described in this section, a provider must ensure each attendant is oriented as described in 26 TAC Chapter 558, Subchapter C, (relating to Minimum Standards for All Home and Community Support Services Agencies) and 26 TAC §558.404 (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services). Orientation is not required for a supervisor when providing personal assistance services.

(b) Method of orientation.

(1) A supervisor must determine the method of attendant orientation, which may be conducted:

(A) in person, with the participation of the individual;
[or]

(B) by telephone or in person at any location without the participation of the individual at the discretion of the supervisor, if the attendant:

(i) meets the requirements described in 26 TAC §558.701 (relating to Home Health Aides);

(ii) has six continuous months of experience in delivering attendant care;

(iii) has been oriented to the individual and there are service delivery plan changes; or

(iv) has previously provided services to the individual; or [—]

(C) by telephone or videoconferencing at the discretion of the supervisor at any location with or without the participation of the individual, if the attendant meets one of the requirements described in subparagraph (B) of this paragraph.

(2) The supervisor may use discretion to determine if the attendant needs to be oriented if:

(A) the attendant previously provided services to the individual; and

(B) the service delivery plan has not changed since the attendant provided services to the individual.

(c) Due dates. The supervisor must orient each attendant on or before the time the attendant begins to provide attendant services.

(d) Documentation of attendant orientation.

(1) The supervisor must record the attendant orientation on a single document that includes:

- (A) the individual's name and number assigned to the individual by HHSC;
- (B) the attendant's name;
- (C) the date of the attendant orientation;
- (D) if the orientation was conducted in person with the individual or without the participation of the individual;
- (E) information about how the individual's condition affects the performance of tasks;
- (F) the tasks to be performed;
- (G) the service schedule;
- (H) the number of hours of service the attendant is to provide;
- (I) the total number of hours of service the individual is authorized to receive;
- (J) safety and emergency procedures, including universal precautions;
- (K) specific situations about which the attendant must notify the provider, including:
 - (i) changes in the individual's needs;
 - (ii) incidents that affect the individual's condition;
 - (iii) hospitalization of the individual;
 - (iv) the individual's absence or relocation from home; and
 - (v) the attendant's inability to work; and
- (L) the signature of:
 - (i) the supervisor who conducts the orientation;
 - (ii) the attendant who is oriented, if present; and
 - (iii) the individual, if present.

(2) The provider must maintain documentation of the attendant orientation in the individual's file.

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 April 23, 2021.

TRD-202101645

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: April 25, 2021

Expiration date: August 22, 2021

For further information, please call: (512) 438-4991



SUBCHAPTER E. SERVICE REQUIREMENTS

40 TAC §47.65

STATUTORY AUTHORITY

This emergency amendment 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 the health and human services system. Texas Government Code §531.021, authorizes the Executive Commissioner of HHSC to adopt rules governing the administration of federal funds to plan and direct the Medicaid program. Texas Human Resources Code §32.021, authorizes the Executive Commissioner of HHSC to adopt rules governing the proper and efficient operation of the Medicaid program.

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

§47.65. Supervisory Visits.

(a) Supervisory visits. A supervisor must conduct in-person supervisory visits to assess and document on a single form whether:

- (1) the service delivery plan is adequate;
- (2) the individual continues to need the services;
- (3) the individual needs a service delivery plan change;
- (4) the attendant continues to be competent to provide the authorized tasks; and
- (5) the attendant is delivering the authorized tasks.

(b) Frequency. A supervisor must establish the frequency of in-person supervisory visits, based on the specific needs of the individual, the attendant, or both. The frequency of in-person supervisory visits must be at least annually.

(c) Documentation of supervisory visits. The provider must maintain documentation of each supervisory visit in the individual's file.

(d) Combining a supervisory visit and a new attendant orientation. A supervisor may conduct a scheduled supervisory visit and a new attendant orientation at the same time.

(e) The requirements in subsections (a) and (b) of this section that a supervisor conduct in-person supervisory visits are temporarily changed until this emergency rule is withdrawn or expires. While this emergency rule is in effect, a supervisor may conduct a supervisory visit by telephone, videoconferencing, or in person, at the discretion of the supervisor.

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 April 23, 2021.

TRD-202101646

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: April 25, 2021

Expiration date: August 22, 2021

For further information, please call: (512) 438-4991



PROPOSED RULES

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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 28. TEXAS AGRICULTURAL FINANCE AUTHORITY

The Texas Agricultural Finance Authority (TAFA), a public authority within the Texas Department of Agriculture (Department), proposes amendments to 4 TAC §28.2, concerning Definitions; §28.4, concerning Communication with the Authority; §28.5, concerning Texas Agricultural Fund; §28.10, concerning Authority; §28.13, concerning Definitions; §28.14, concerning Application Procedure for Applicant; §28.15, concerning Application Procedure for Lender; §28.20, concerning Authority; §28.23, concerning Definitions; §28.26, concerning Consideration of Applications; §28.32, concerning Criteria for Approval of Loan Guarantee; §28.35, concerning Loan Guarantee Administration; §28.36, concerning Interest Rebate Requirements and Procedures; §28.42, concerning Definitions; §28.43, concerning Application Procedure for Applicant; §28.44, concerning Application Procedure for Lender; §28.55, concerning Administration of Program; §28.60, concerning Purpose and Application of Rules; §28.61, concerning Definitions; and §28.62, concerning Collection of Funds by County Tax Assessor-Collector and Remittance to Comptroller. TAFA identified the need for the proposed amendments during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption for which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §28.2 remove duplicative definitions found in 4 TAC §1.1.

The proposed amendments to §28.4 clarify how to communicate with TAFA and remove outdated language to conform to current procedures.

The proposed amendment to §28.5 makes an editorial change to remove unnecessary language.

The proposed amendments to §28.10 make an editorial change to remove unnecessary language.

The proposed amendment to §28.13 makes an editorial change to remove an unnecessary and outdated citation.

The proposed amendments to §28.14 clarify how to communicate with TAFA.

The proposed amendments to §28.15 clarify the rule and remove outdated language to conform to current procedures.

The proposed amendments to §28.20 make an editorial change to remove unnecessary language.

The proposed amendment to §28.23 makes an editorial change to remove an unnecessary and outdated citation.

The proposed amendment to §28.26 clarifies the rule.

The proposed amendment to §28.32 removes outdated language to conform to current procedures.

The proposed amendment to §28.35 corrects a typographical error.

The proposed amendments to §28.36 make an editorial change to remove unnecessary language and correct a typographical error.

The proposed amendments to §28.42 make an editorial change to remove unnecessary language.

The proposed amendments to §28.43 clarify how to communicate with TAFA.

The proposed amendments to §28.44 clarify the rule and remove outdated language to conform to current procedures.

The proposed amendments to §28.55 simplify the requirements for providing notice of Young Farmer Grant application periods.

The proposed amendments to §28.60 update statutory references.

The proposed amendments to §28.61 update statutory references.

The proposed amendments to §28.62 update statutory references and make an editorial change.

Ms. Karen Reichek, Administrator for Trade and Business Development, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the rules.

Ms. Reichek has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be improved readability and clarity of the rules.

Ms. Reichek has determined there are no anticipated economic costs to persons required to comply with the proposed amendments.

Ms. Reichek has provided the following government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. During the first five years the proposed amendments are in effect:

- (1) no government programs will be created or eliminated;
- (2) no employee positions will be created or eliminated;
- (3) there will be no increase or decrease in future legislative appropriations to the Department;

(4) there will be no increase or decrease in fees paid to the Department;

(5) no new regulations will be created by the proposal;

(6) there will be no expansion, limitation, or repeal of existing regulation;

(7) there will be no increase or decrease in the number of individuals subject to the rules; and

(8) there will be no positive or adverse effect on the Texas economy.

The Department has determined the proposed rules will not affect a local economy within the meaning of Government Code §2001.022 and will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

Written comments on the proposal may be submitted by mail to Ms. Karen Reichek, Administrator for Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to karen.reichek@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. FINANCIAL ASSISTANCE RULES

4 TAC §§28.2, 28.4, 28.5

The amendments are proposed pursuant to Section 58.022 of the Texas Agriculture Code (Code), which provides that TAFE may adopt and enforce bylaws, rules, and procedures necessary for the Board of Directors of TAFE to carry out Chapter 58 of the Code; Section 58.015 of the Code, which provides that the Commissioner with the assistance of the Board of Directors of TAFE shall administer TAFE; and Section 12.016 of the Code, which authorizes the Department to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 58 and Chapter 12.

§28.2. Definitions.

In addition to the definitions set forth in Texas Agriculture Code, §58.002, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Definitions applicable to specific programs may be included within the applicable subchapter.

(1) - (9) (No change.)

~~[(10) Commissioner--The Commissioner of the Texas Department of Agriculture.]~~

10 [(11)] Comptroller--The Texas Comptroller of Public Accounts.

11 [(12)] Current market rate--The rate of interest on a United States treasury bill or note, the maturity date of which most closely matches the maturity date of the loan, or the end of the current biennium of the State, whichever is sooner, as determined by reference to the United States treasury bill or note section of the Wall Street Journal or equivalent publication including an electronic publication, published on the day the loan is priced.

12 [(13)] Default--The failure to perform an obligation established by the loan agreement, these rules or the Act.

~~[(14) Department--The Texas Department of Agriculture.]~~

13 [(15)] Deputy Commissioner--The Deputy Commissioner of the Texas Department of Agriculture.

14 [(16)] Equity--The applicant's contribution to a project in the form of cash, land, or other depreciable property.

15 [(17)] Fund--The Texas agricultural fund.

16 [(18)] Lender--A financial institution that makes commercial loans and is either a depository of state funds or an institution of the Farm Credit System headquartered in this state including a bank, banking association, savings bank, trust company, mortgage company, investment banker, credit union, underwriter, life insurance company, or any affiliate of those entities, and also including any other financial institution or governmental agency that customarily provides financing of agricultural loans or mortgages, or any affiliate of such an institution or agency, or any institution that the board determines is an experienced and sophisticated financial institution that agrees to participate in a financial program under this chapter.

17 [(19)] Loan guarantee amount--With respect to loans made by a lender and guaranteed by the Authority, a sum measured in terms of United States dollars that the Authority pays to the lender to acquire an undivided interest in any loan or, in the case of default by the borrower, the Authority agrees to pay to the lender, not to exceed the percentage as stated in the guaranty agreement.

18 [(20)] Programs--Any financial assistance program approved by the Authority board and defined by the rules under this chapter.

19 [(21)] Project--An enterprise which would further the expansion or development of production, processing, marketing or exporting of Texas agricultural products or other agricultural-related rural economic development projects.

20 [(22)] Qualified application--A completed application, including all documents and information required by the Authority and submitted by the lender or applicant, for participation in a program under this chapter.

21 [(23)] Rural--A municipality with a population of less than 50,000.

22 [(24)] Staff--The staff of the Authority or staff of the department performing work for the Authority.

23 [(25)] State--The State of Texas.

§28.4. Communication with the Authority.

Applications and other written communications to the Authority should be addressed to the attention of the Texas Agricultural Finance Authority, in care of the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or other method provided in the solicitation document. [Applications or other written communication may also be sent electronically to finance@TexasAgriculture.gov.]

§28.5. Texas Agricultural Fund.

The fund, established in the office of the [state] comptroller, may consist of general obligation bond or commercial paper note proceeds, revenues generated from fees on farm vehicle registrations, appropriations or transfers made to the fund, guaranty fees, monies received from the operation of the program, interest paid on money in the fund from the operation of the program, interest paid on money in the fund and any other monies received from other sources for the fund. The board may provide for the establishment and maintenance of separate accounts within the fund, including loan guaranty program accounts as prescribed 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.

Filed with the Office of the Secretary of State on April 26, 2021.

TRD-202101648

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 936-9360



SUBCHAPTER B. INTEREST RATE REDUCTION PROGRAM

4 TAC §§28.10, 28.13 - 28.15

The amendments are proposed pursuant to Section 58.022 of the Texas Agriculture Code (Code), which provides that TAFE may adopt and enforce bylaws, rules, and procedures necessary for the Board of Directors of TAFE to carry out Chapter 58 of the Code; Section 58.015 of the Code, which provides that the Commissioner with the assistance of the Board of Directors of TAFE shall administer TAFE; and Section 12.016 of the Code, which authorizes the Department to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 58 and Chapter 12.

§28.10. Authority.

~~The [Through action of the Texas Legislature, the] Texas Agricultural Finance Authority is authorized by Chapter 44 of the Code, §44.007 to establish the Interest Rate Reduction Program.~~

§28.13. Definitions

In addition to the definitions set out in the Texas Agriculture Code, Chapter 58, as amended, and in Subchapter A of this chapter (relating to Financial Assistance Rules), 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 Agriculture Code, Chapter 44, §44.007[; as amended with the passage of Senate Bill 1016 by the 81st Texas Legislature, 2009].

(2) - (4) (No change.)

§28.14. Application Procedure for Applicant.

(a) (No change.)

(b) The eligible borrower shall notify the Authority [Authority's office in Austin in writing] upon receipt of the loan proceeds indicating the amount received, date received, and the total amount of loan drawn to date in a manner provided by §28.4 of this chapter (relating to Communication with the Authority).

§28.15. Application Procedure for Lender.

A lender must comply with the following procedures to obtain approval of an application for participation in the program.

(1) - (5) (No change.)

(6) A lender shall forward the original completed and approved application to the Authority pursuant to instructions in the solicitation document. [The application may be sent by facsimile transmitter (FAX) or a scanned document by electronic transmission to the

Authority in Austin upon review and approval by the lender with the original remitted by next day United States mail.]

(7) - (11) (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 April 26, 2021.

TRD-202101649

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 936-9360



SUBCHAPTER C. AGRICULTURAL LOAN GUARANTEE PROGRAM

4 TAC §§28.20, 28.23, 28.26, 28.32, 28.35, 28.36

The amendments are proposed pursuant to Section 58.022 of the Texas Agriculture Code (Code), which provides that TAFE may adopt and enforce bylaws, rules, and procedures necessary for the Board of Directors of TAFE to carry out Chapter 58 of the Code; Section 58.015 of the Code, which provides that the Commissioner with the assistance of the Board of Directors of TAFE shall administer TAFE; and Section 12.016 of the Code, which authorizes the Department to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 58 and Chapter 12.

§28.20. Authority.

~~The [Through action of the Texas Legislature, the] Texas Agricultural Finance Authority is authorized by Chapter 58 of the Code, Subchapter E, §§58.051 - 58.056 to establish the Agricultural Loan Guarantee Program.~~

§28.23. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, Chapter 58, as amended, and in Subchapter A of this chapter (relating to Financial Assistance Rules), the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Act--Texas Agriculture Code, Chapter 58, Subchapter E[; as amended with the passage of Senate Bill 1016 by the 81st Texas Legislature, 2009].

(2) - (5) (No change.)

§28.26. Consideration of Applications.

(a) (No change.)

(b) Submission of application. All applicants are required to obtain approval from a lender before applications will be accepted by the Authority. Staff will be available [prior to submission of the qualified application] to assist applicants and lenders in determining eligibility for a loan guarantee under this subchapter.

(c) - (h) (No change.)

§28.32. Criteria for Approval of Loan Guarantee.

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

(c) The Authority has adopted a Credit Policy and Procedures document which contains additional guidelines used by the Authority in the loan guarantee review and approval process. The Credit Policy and Procedure document may be obtained from the Texas Agricultural Finance Authority, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711[or at finance@TexasAgriculture.gov].

§28.35. *Loan Guarantee Administration.*

(a) Except as otherwise provided by state law, by these rules or by resolution of the board, the staff, with the approval of the commissioner, the deputy commissioner of agriculture, or the official of the department designated by the commissioner of agriculture as being responsible for the department's agricultural finance programs, shall have the authority to act on behalf of the Authority, without specific board approval, in regard to the ongoing [on going] servicing, collection, settlement, and enforcement of each and every loan guaranteed by the Authority under the program. Such authority shall include, without limitation, the actions required to be taken by the Authority under any loan agreement, and any other agreement entered into by the Authority concerning a loan guaranteed by the Authority under the program.

(b) (No change.)

§28.36. *Interest Rebate Requirements and Procedures.*

(a) - (f) (No change.)

(g) Within 30 days of receipt of proper verification documentation, the Authority will prepare and present documentation to the comptroller [state comptroller's office] for issuance of a voucher from the account [Account].

(h) (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 April 26, 2021.

TRD-202101650

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 936-9360



SUBCHAPTER D. YOUNG FARMER INTEREST RATE REDUCTION PROGRAM RULES

4 TAC §§28.42 - 28.44

The amendments are proposed pursuant to Section 58.022 of the Texas Agriculture Code (Code), which provides that TAFE may adopt and enforce bylaws, rules, and procedures necessary for the Board of Directors of TAFE to carry out Chapter 58 of the Code; Section 58.015 of the Code, which provides that the Commissioner with the assistance of the Board of Directors of TAFE shall administer TAFE; and Section 12.016 of the Code, which authorizes the Department to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 58 and Chapter 12.

§28.42. *Definitions.*

In addition to the definitions set out in the Texas Agriculture Code, Chapter 58, as amended, and in Subchapter A of this chapter (relating to Financial Assistance Rules) the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Act--Texas Agriculture Code, Chapter 58, Subchapter F, Texas Agriculture Code §§58.071 - 58.075[; as enacted by the passage of Senate Bill 1016 by the 81st Texas Legislature, 2009].

(2) - (4) (No change.)

§28.43. *Application Procedure for Applicant.*

(a) (No change.)

(b) The eligible borrower shall notify the Authority [Authority's office in Austin in writing] upon receipt of the loan proceeds indicating the amount received, date received, and the total amount of loan drawn to date in a manner provided by §28.4 of this chapter (relating to Communication with the Authority).

§28.44. *Application Procedure for Lender.*

A lender must comply with the following procedures to obtain approval of an application for participation in the program.

(1) - (5) (No change.)

(6) A lender shall forward the original completed and approved application to the Authority pursuant to instructions in the solicitation document. [The application may be sent by facsimile transceiver (FAX) or a scanned document by electronic transmission to the Authority in Austin upon review and approval by the lender with the original remitted by next day United States mail.]

(7) - (11) (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 April 26, 2021.

TRD-202101651

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 936-9360



SUBCHAPTER E. YOUNG FARMER GRANT PROGRAM RULES

4 TAC §28.55

The amendments are proposed pursuant to Section 58.022 of the Texas Agriculture Code (Code), which provides that TAFE may adopt and enforce bylaws, rules, and procedures necessary for the Board of Directors of TAFE to carry out Chapter 58 of the Code; Section 58.015 of the Code, which provides that the Commissioner with the assistance of the Board of Directors of TAFE shall administer TAFE; and Section 12.016 of the Code, which authorizes the Department to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 58 and Chapter 12.

§28.55. *Administration of Program.*

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

(c) The Board shall set two periods during each fiscal year in which the Authority will receive and approve grant applications. Notice of these grant periods will be posted on the department's website [published in the *Texas Register* at least twice per fiscal year].

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 April 26, 2021.

TRD-202101652

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 936-9360



SUBCHAPTER F. RULES FOR DEPOSITION AND REFUND OF ASSESSMENT FEES

4 TAC §§28.60 - 28.62

The amendments are proposed pursuant to Section 58.022 of the Texas Agriculture Code (Code), which provides that TAFE may adopt and enforce bylaws, rules, and procedures necessary for the Board of Directors of TAFE to carry out Chapter 58 of the Code; Section 58.015 of the Code, which provides that the Commissioner with the assistance of the Board of Directors of TAFE shall administer TAFE; and Section 12.016 of the Code, which authorizes the Department to adopt rules as necessary for the administration of its powers and duties under the Code.

The codes affected by the proposal are Texas Agriculture Code, Chapter 58 and Chapter 12; and Texas Transportation Code, Chapter 502.

§28.60. Purpose and Application of Rules.

The purpose of this subchapter is to provide for the administration of the collection of assessments by county tax assessor-collectors as provided for in §502.404 [§502.174] of the Texas Transportation Code; and to provide for the remittance of such assessments to the comptroller for deposit in the Texas agricultural fund.

§28.61. Definitions.

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

(1) Assessment--A voluntary fee paid on each commercial motor vehicle registered under the Transportation Code, §502.404 [§502.174].

(2) (No change.)

§28.62. Collection of Funds by County Tax Assessor-Collector and Remittance to Comptroller.

(a) Each county tax assessor-collector shall collect the voluntary assessment required by the Transportation Code, §502.404 [§502.174].

(b) Each county tax assessor-collector shall provide notice of the refund procedures defined in §28.63 of this chapter [title] (relating to Refunding of Assessment) to persons paying an assessment at the time of payment.

(c) - (e) (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 April 26, 2021.

TRD-202101653

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 936-9360



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER U. RECOMMENDED COURSE SEQUENCE; DEVELOPMENT AND INSTITUTIONAL REPORTING.

19 TAC §§4.360 - 4.364

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter U, §§4.360-4.364, concerning Recommended Course Sequencing; Development and Institutional Reporting. Specifically, this new section will provide Texas public institutions of higher education with clarity on the development and reporting of recommended course sequencing for undergraduate certificate and degree programs.

The Coordinating Board convened a negotiated rulemaking committee, comprised of higher education institutional representatives with expertise in curriculum development, course sequencing, and institutional reporting. The negotiated rulemaking committee met once on March 9, 2021, to develop the proposed rules. The negotiated rulemaking committee developed the proposed rules in alignment with Texas Education Code (TEC) §51.96852, which authorizes the board to adopt rules relating to the development, reporting, and publication of recommended course sequences.

Rule 4.360 provides the purpose of the subchapter is to implement rules in accordance with statute.

Rule 4.361 provides the statutory authority, specifically TEC §51.96852, which authorizes the Coordinating Board to adopt rules relating to the development, reporting, and publication of recommended course sequences.

Rule 4.362 provides definitions related to course sequencing, which allow institutional reporting officials with clear guidance related to the following terms: certificate, Coordinating Board, Core Curriculum, Course Sequence, Degree Program, Institution of Higher Education, Lower-Division Academic Course Guide Manual, and Texas Common Course Numbering System.

These definitions align the terms used in this subchapter with the definitions in other rules and the TEC. Alignment of the definitions across the chapters provides greater clarity about the requirements of the rules.

Rule 4.363 sets forth the expectations and requirements for Texas public institutions of higher education to develop at least one recommended course sequence for each undergraduate or degree program offered by the institution. The proposed rules specify that the recommended course sequences must identify all required lower-division courses for each certificate or degree program and include the Texas Common Course Numbering System course number and the course equivalent in the Lower-Division Academic Course Guide Manual. The recommended course sequences must also allow a full-time student to obtain a certificate or degree within a specified timeframe, which is two years for a 60-hour degree or certificate program, four years for a 120-hour degree program, or a comparable time frame of an approved certificate or degree program that requires a different time frame. This rule implements the requirement of TEC §51.96852. The rule further provides that each institution must publish the course sequence on its website not later than August 1 of each year. The requirement to publish this information in advance of the beginning of the fall semester will inform students about which courses best advance their progress toward a degree.

Rule 4.364 provides institutions of higher education reporting requirements related to recommended course sequencing. This includes a requirement for the Coordinating Board to publish instructions on its website to provide institutions clear guidance for reporting the required recommended course sequences. The Coordinating Board will publish instructions not later than September 1, 2021. Additionally, the Coordinating Board will provide institutions of higher education the template to use to submit the recommended course sequences to the agency. On an annual basis, institutions will review their recommended course sequences and provide updates to the Coordinating Board during a designated time period. These provisions implement the reporting requirements set out in TEC §51.96852(c), to ensure that institutions are timely and transparent in their reporting to the Board and to students.

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the rules are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering these rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Stacey Silverman has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be greater efficiency of Texas students in progressing through undergraduate certificate or degree programs. Students will be able to better understand the courses and the order in which they complete the recommended courses, which will allow them to efficiently progress through the recommended course sequence. Additionally, institutions, and specifically institutional advisors will be able to better help students navigate the course sequences they will

need to complete an undergraduate certificate or degree. The proposed rules have long-term impact of reducing the cost of education for students. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Stacey Silverman, Ph.D., Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711 or via email at Rules@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, Section 51.96852, which provides the Coordinating Board with the authority to adopt rules relating to the development, reporting, and publication of recommended course sequences.

The proposed new section affects Texas public institutions of higher education as defined in Texas Education Code Section 61.003 and the Coordinating Board.

§4.360. Purpose.

The purpose of this subchapter is to implement rules requiring institutions of higher education to develop and report recommended course sequences for undergraduate certificate and degree programs in accordance with statute.

§4.361. Authority.

Texas Education Code §51.96852 authorizes the board to adopt rules relating to the development, reporting, and publication of recommended course sequences.

§4.362. Definitions.

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

(1) Certificate--a grouping of subject-matter courses which, when satisfactorily completed by a student, will lead to an undergraduate certificate from an institution of higher education.

(2) Coordinating Board or Board--the Texas Higher Education Coordinating Board.

(3) Core Curriculum or Texas Core Curriculum (TCC)--a required curriculum for an undergraduate degree, as defined in §4.23(3) of this title (relating to Definitions) and authorized by Texas Education Code §61.822.

(4) Course Sequence--a recommended list of courses by semester, term, or enrollment period that will satisfy the requirement for a student to complete an undergraduate certificate or degree program.

(5) Degree program--any grouping of subject-matter courses which, when satisfactorily completed by a student, will lead to an undergraduate degree from an institution of higher education.

(6) Institution of Higher Education--any public institution of higher education as defined by Texas Education Code, Section 61.003(8).

(7) Lower-Division Academic Course Guide Manual (ACGM)--a publication listing academic courses, as defined in §4.23(13) of this title.

(8) Texas Common Course Numbering System (TC-CNS)--a common course numbering system, as defined in §4.23(10) of this title and authorized by Texas Education Code §61.832.

§4.363. Recommended Course Sequence Development.

(a) Each institution of higher education must develop at least one recommended course sequence for each undergraduate certificate or degree program offered by the institution.

(b) Each course sequence developed by the institution of higher education must:

(1) Identify all required lower-division courses for each certificate or degree program, if applicable;

(2) Include for each course, if applicable:

(A) The TCCNS course number; and

(B) The course equivalent in the ACGM; and

(3) Be designed to enable a full-time student to obtain a certificate or degree, as applicable, within:

(A) two years, for a 60-hour degree or certificate program;

(B) four years, for a 120-hour degree program; or

(C) a comparable time frame, for an approved certificate or degree program that requires credit hours other than those specified in subparagraph (A) or (B) of this paragraph.

(4) include at least one specific sequence in which courses should be taken to ensure completion of the applicable program within the time frame described in Section (b), subsection (3).

(c) Each institution shall publish the recommended course sequences developed under this rule in the institution's course catalog beginning with the 2021-2022 academic year course catalog cycle. Each institution shall publish recommended course sequences on the institution's website not later than August 1 of each year.

§4.364. Recommended Course Sequence: Institutional Reporting.

(a) In accordance with Texas Education Code §51.96852(b) and (c), each institution of higher education shall provide to the Coordinating Board a recommended course sequence for each undergraduate certificate and degree program offered by the institution. Not later than September 1, 2021, the Coordinating Board shall publish on its website instructions for institutions to submit course sequencing reporting.

(b) The Coordinating Board will provide institutions of higher education a template and instructions for submitting the recommended course sequences of undergraduate certificate and degree programs. Institutions must submit the recommended course sequences of undergraduate certificate and degree programs annually in accordance with the instructions and template and must include the following information, if applicable:

(1) Recommended course sequences must identify all courses required for completion by a student to attain each undergraduate certificate or degree; and

(2) For all courses that an institution includes in a recommended course sequence, the institution must identify the ACGM courses, as appropriate, using the TCCNS course numbers and rubrics.

(c) On an annual basis, institutions shall review course sequences for accuracy and submit any revisions or changes to the Coordinating Board during the designated time period.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101598

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 427-6206



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S

RULES ON SCHOOL FINANCE

19 TAC §61.1020

The Texas Education Agency (TEA) proposes an amendment to §61.1020, concerning excess funds for video surveillance of special education settings. The proposed amendment would implement House Bill (HB) 3, 86th Texas Legislature, 2019, by revising calculations and updating statutory references.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1020 authorizes the commissioner to make a grant application available to school districts and open-enrollment charter schools that have purchased or that intend to purchase video equipment for use in implementing Texas Education Code (TEC), §29.022, to allow them to apply for funds necessary to reimburse the cost of such equipment. School districts and open-enrollment charter schools may submit a separate application request in each year excess funds are made available.

HB 3, 86th Texas Legislature, 2019, recodified TEC, Chapter 42, to Chapter 48. The proposed amendment to §61.1020 would update statutory references to conform to the recodification and would also reflect calculations required by the provisions of Chapter 48.

The proposed amendment to §61.1020(f)(1) would revise the definition of the state maximum compressed tax rate to be the state compression percentage as defined by TEC, §48.255.

The proposed amendment to §61.1020(h)(1) would modify the definition of the Priority 1 status award for eligible grant applications to applications from school districts that have current year adopted tax rates for maintenance and operations at \$0.17 above their maximum compressed tax rates.

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 beyond what the authorizing statute requires.

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 by applying calculations that reflect school districts' new maximum compressed tax rates under TEC, Chapter 48.

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: 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 ensuring that rule language is based on current law and continuing to provide a grant program to school districts and charter schools that have purchased or that intend to purchase video equipment to allow them to apply for funds necessary to reimburse the cost of such equipment. 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 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 May 7, 2021, and ends June 7, 2021. 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 May 7, 2021. 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/](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), §48.265, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019, which requires the commissioner by rule to establish a grant program through which excess Foundation School Program funds are awarded as grants for the purchase of video surveillance equipment for compliance with the TEC, §29.022; and TEC, §29.022, which requires a school district or open-enrollment charter school, on receipt of a written request authorized by this section, to provide equipment, including a video camera, to the school or schools in the district or the charter school campus or campuses specified in the request.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.265, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019, and §29.022.

§61.1020. Excess Funds for Video Surveillance of Special Education Settings.

(a) General provisions. This section implements the Texas Education Code (TEC), §48.265 [§42.2528] (Excess Funds for Video Surveillance of Special Education Settings). If the commissioner of education determines that appropriated funds are highly likely to exceed expenditures under the Foundation School Program (FSP) for the biennium after accounting for all critical FSP data required to make accurate expenditure estimates and there is sufficient funding remaining to provide for a grant program under the TEC, §48.265 [§42.2528], the commissioner shall make a grant application available to apply for funds to cover the cost of purchasing video equipment for use in implementing the TEC, §29.022, and announce the amount of funds available.

(b) Eligibility. School districts and charter schools that have purchased or that intend to purchase video equipment for the purpose of implementing the TEC, §29.022, may apply for funds necessary to reimburse the cost of such equipment. Purchases made after September 1, 2015, that have not been previously reimbursed under this grant program or through gifts, grants, or donations under the TEC, §29.022(f), are eligible to apply.

(c) Application process. School districts and charter schools must submit a separate application request in each year that excess funds are made available. The application shall contain, at a minimum, the following:

(1) a description of the type of equipment to be purchased or that has been purchased using funds provided under this section;

(2) a description of the intended use of the equipment to be funded using funds provided under this section; and

(3) an itemized account of the cost of the equipment to be funded using funds provided under this section.

(d) Finality of award. Awards of assistance under this section will be made based on the information available to the Texas Education Agency as of the deadline for receipt of applications for that application cycle.

(e) Data sources. The maintenance and operations tax rate and the interest and sinking tax rate will be based on data from the comptroller of public accounts property tax assistance division for the current school year. Maintenance and operations tax collections and the count of students in weighted average daily attendance (WADA) will come

from the most recently published summary of finance for the most recent school year that is in Final or Near Final status.

(f) Definitions. The following terms have the following meanings when used in this section.

(1) State maximum compressed tax rate--The state compression percentage as defined by TEC, §48.255 [~~multiplied by \$1.50~~].

(2) Maintenance and operations tax collections per WADA--The maintenance and operations tax collections net of payments into a tax increment fund and net of payments for an Instructional Facilities Allotment lease purchase arrangement as reported in the most recently available school year that is in Final or Near Final status divided by the count of students in weighted average daily attendance as reported in the same summary of finance.

(3) Video equipment--Video equipment as described in §103.1301(b)(8) of this title (relating to Video Surveillance of Certain Special Education Settings).

(4) Eligible requests--An eligible request for funds is a request for video equipment that is necessary to comply with the provisions of the TEC, §29.022, and that has not received funds under this section in a prior application cycle or through a gift, grant, or donation under the TEC, §29.022(f).

(g) Deadlines. The commissioner will announce a deadline in conjunction with making a determination that excess funds are available for the purpose of implementing the TEC, §48.265 [~~§42.2528~~]. All applications received by the announced deadline will be reviewed. Successful applications will be ranked according to the criteria in subsection (h) of this section.

(h) Priority status. Upon close of the application cycle, all eligible applications will be awarded priority status in accordance with the criteria outlined in paragraphs (1)-(4) of this subsection. All applications within Priority 1 will be fully funded before funds are allocated to Priority 2 and Priority 3. Funds not used for Priority 1 will be allocated to Priority 2 and Priority 3 in proportion to the total funds requested by school districts in those categories. If Priority 2 and Priority 3 applications are fully funded, remaining funds will be allocated to Priority 4.

(1) Priority 1. Applications from school districts that have current-year adopted tax rates for maintenance and operations [~~of~~] at \$0.17 above their maximum compressed tax rates [~~least \$1.17~~]. If insufficient funds remain to fully fund all Priority 1 applications, funds will be awarded in proportion to the amount of eligible requests for each applicant compared to total available funds.

(2) Priority 2. Applications from school districts with maintenance and operations tax rates at least equal to the state maximum compressed tax rate. Priority 2 applications will be sorted by maintenance and operations tax collections per WADA and Priority 2 funds shall be awarded beginning with the school district with the lowest collections per WADA.

(3) Priority 3. Applications from school districts with interest and sinking fund tax rates of at least \$0.40 per \$100 of valuation. Priority 3 applications will be sorted by interest and sinking tax rates, and Priority 3 funds shall be awarded beginning with the school district with the highest interest and sinking tax rate. If insufficient funds remain to fully fund all Priority 3 school districts at a given interest and sinking tax rate, remaining funds will be awarded in proportion to the amount of eligible requests for each applicant compared to total available funds.

(4) Priority 4. All other applications. Remaining funds available for Priority 4 applications, including charter schools, shall

be awarded in proportion to the amount of eligible requests compared to total available funds.

(i) Distribution of funds. Funds will be allocated through the FSP and will appear on the school district or charter school summary of finance and be delivered as soon as is practicable after awards have been made.

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 April 26, 2021.

TRD-202101655

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 475-1497

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 555. NURSING FACILITY ADMINISTRATORS

The Texas Health and Human Services Commission (HHSC) proposes the repeal of §§555.4 and 555.11 - 555.16; new §§555.3, 555.11 - 555.18; and amendments to §§555.1, 555.2; §§555.31 - 555.42, and §§555.51 - 555.57, in Title 26, Part 1, Chapter 555, concerning Nursing Facility Administrators.

BACKGROUND AND PURPOSE

This proposal will amend existing, add new, and repeal portions of the nursing facility administrators (NFA) licensure requirements to correspond with the Nursing Administrators Board (NAB) requirements, including reciprocity. This includes adopting the NAB Administrator-in-Training (AIT) manual and preceptor training, and becoming more flexible with reciprocity, such as license by endorsement and accepting internships or AIT completed in other states or a NAB accredited program.

This proposal will amend Subchapter C, Licenses, new §555.3, to amend the administrative and licensure fees collected by HHSC and other administrative fees collected by the NAB designee or contractor.

The proposal will amend Subchapter C, Licenses, §§555.31, 555.32, 555.34, and 555.41, to implement House Bill 1342, which requires HHSC to eliminate certain grounds for disqualification for an occupational license based on prior criminal convictions that are unrelated to the duties and responsibilities of an occupational license. This includes requiring a licensing authority to provide an applicant an opportunity to submit relevant information in the event of a potential denial of a license based on prior criminal convictions.

The proposal will amend Subchapter C, Licenses, §555.42, to implement Senate Bill 1200, which allows for military spouses who have occupational licensing from other states to engage in that occupation without obtaining an additional license by follow-

ing the notification and reciprocal licensing procedures laid out in the proposal.

NFAs will be able to take required training, to become or maintain certification as a preceptor, at their convenience and via computer-based training (CBT) instead of having to travel to an in-person training location. The in-person training is currently held twice a year. On-demand CBT will allow Preceptors to complete the training at a time that works for them and without incurring travel costs. Allowing reciprocity for an individual credentialed as a Health Services Executive (HSE) will also streamline the process for obtaining credentialing as an NFA.

Due to the challenges presented by the COVID-19 pandemic and the need for greater awareness and emphasis on infection control and personal protective equipment (PPE), HHSC is also proposing that nursing facility (NF) providers increase infection control training and continuing education requirements for NFAs.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §555.1 updates language for better readability and understanding.

The proposed amendment to §555.2 adds definitions for "abuse," "good standing," "health services executive," "internship," "Long-term Care Regulatory," "management experience," "misappropriation of resident property," neglect," and "Texas Health and Safety Code," and amends or removes definitions for "administrator," "administrative law judge," "application," "DADS," "deficiency," "equivalent," "informal review," "NAB," "opportunity to show compliance," "Regulatory Services Division," "State of Texas Administrator," and "survey."

Proposed new §555.3 adds the fee for the National Association of Long-Term Care Administrator Boards (NAB) examination.

The proposed repeal of §555.4 deletes the rule as no longer necessary, because the content of the rule has been updated and re-proposed in §555.3.

The proposed repeal of §§555.11 - 555.16 deletes the rules as no longer necessary, because the content of the rules has been updated and re-proposed in new §555.11 - 555.18.

Proposed new §555.11 details NFA licensure application requirements to facilitate the NF.

Proposed new §555.12 adds licensure requirements to obtain a license as an NFA.

Proposed new §555.13 adds a requirement for an AIT to complete an HHSC course in Infection Control and PPE before obtaining an NFA license, adopts the NAB AIT manual and preceptor training, and adds flexibility with reciprocity.

Proposed new §555.14 adds details on preceptor requirements for NF seeking to sponsor administrator-in-training.

Proposed new §555.15 gives details of when HHSC may issue a preceptor certification.

Proposed new §555.16 adds preceptor certification renewal details for licensee seeking to renew a preceptor certification.

Proposed new §555.17 adds reasons that HHSC may deny an application for preceptor certification or a preceptor certification renewal.

Proposed new §555.18 requires an applicant seeking license as an NFA from HHSC to pass required examinations for licensure.

The proposed amendment to §555.31 changes the agency responsible from DADS (Department of Aging and Disability Services) to HHSC as the issuer of a license certificate to an applicant and adds details regarding criminal history during initial license.

The proposed amendment to §555.32 replaces DADS with HHSC as the issuer of a provisional license to an applicant currently licensed or registered as a NFA.

The proposed amendment to §555.33 replaces DADS with HHSC as the agency to replace a duplicate license for licensee.

The proposed amendment to §555.34 changes the agency responsible from DADS to HHSC regarding notifying a licensee of the license expiration date and renewal requirements at least 31 days before the license expires.

The proposed amendment to §555.35 requires a licensee to complete HHSC Continuing Education Units that cover infection control license renewal.

The proposed amendment to §555.36 clarifies details for completing a late license renewal application.

The proposed amendment to §555.37 changes the agency responsible from DADS to HHSC updates details regarding denying an application for license renewal.

The proposed amendment to §555.38 clarifies details for how a licensee may place a license in a formal inactive status with HHSC for up to two renewal periods.

The proposed amendment to §555.39 changes the agency responsible from DADS to HHSC.

The proposed amendment to §555.40 changes the agency responsible from DADS to HHSC and adds details on obtaining a new license without taking the examination required by §555.18 of this chapter.

The proposed amendment to §555.41 denies an initial or renewal application for licensure for applicant or licensee convicted of a crime related to their duties.

The proposed amendment to §555.42 allows applicants to request additional time to complete license renewal requirements. An administrator must submit a written request for additional time to HHSC before the expiration date of the administrator's license and must include with the request documentation of the administrator's status as a military service member. Documentation as a military service member that is acceptable to HHSC includes a copy of a current military service order issued to the administrator by the armed forces of the United States, the State of Texas, or another state. The proposed amendment also recognizes an out-of-state license for a military spouse.

The proposed amendment to §555.51 changes the agency responsible from DADS to HHSC and updates details for the procedure to receive and investigate referrals and complaints.

The proposed amendment to §555.52 changes the agency responsible from DADS to HHSC and adds details on informal reviews for HHSC to initiate proceedings.

The proposed amendment to §555.53 changes the agency responsible from DADS to HHSC and adds that HHSC may give a licensee a formal hearing notice and other related details.

The proposed amendment to §555.54 changes the agency responsible from DADS to HHSC and adds that HHSC may im-

pose a sanction against a licensee on proof of any of the ground rule or statutory violations.

The proposed amendment to §555.55 changes the agency responsible from DADS to HHSC and adds that HHSC may impose a sanction against a licensee for violations of the NFA Standards of Conduct.

The proposed amendment to §555.56 changes the agency responsible from DADS to HHSC and adds that a person with expired license must return the license certificate to HHSC within ten (10) days of expiration.

The proposed amendment to §555.57 changes the agency responsible from DADS to HHSC and adds that HHSC may impose one or more sanctions against a licensee for a violation of this subchapter.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will expand and repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There are no requirements to alter current business practices. In addition, no rural communities contract with HHSC in any program or service affected by the proposed rule.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be more flexibility for nursing facilities to complete required infection control and PPE

training online. As a result, nursing facilities will have more ability to meet required health and safety needs for staff and residents.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules because the proposal does not impose any new costs or fees on persons required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Bridney Jones at (512) 438-4266 in HHSC Long-term Care Regulatory Services.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 18R057" in the subject line.

SUBCHAPTER A. GENERAL INFORMATION

26 TAC §§555.1 - 555.3

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

The amendments implement Texas Government Code §531.0055 and §531.021, Texas Human Resources Code §32.021, and Texas Health and Safety Code §242.302.

§555.1. Purpose.

This chapter implements the provisions of the Texas Health and Safety Code, Chapter 242, Subchapter I, Nursing Facility Administration,

which concern [for the purpose of] licensing nursing facility administrators in the state of Texas.

§555.2. *Definitions.*

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

(1) ~~Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure) or Texas Penal Code Chapter 22 (relating to Assaultive Offenses), sexual harassment, sexual coercion, or sexual assault. [Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action that causes or could cause mental or physical injury or harm or death to a nursing facility resident. Abuse includes verbal, sexual, mental, psychological, or physical abuse; corporal punishment; involuntary seclusion; or any other actions within this definition.]~~

(2) ~~Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.~~

~~[(3) Administrator--A licensed nursing facility administrator.]~~

(3) ~~[(4) Administrator of Record--The individual who is listed as the facility's licensed nursing facility administrator with the HHSC [DADS] Licensing and Credentialing Section.~~

(4) ~~[(5) Administrator-in-training (AIT)--[AIT--Administrator in training.] A person undergoing an [a minimum 1,000 hour] internship under a HHSC-approved [DADS-approved] certified preceptor.~~

~~[(6) ALJ--Administrative law judge. A State Office of Administrative Hearings (SOAH) attorney who conducts formal hearings for the Department of Aging and Disability Services.]~~

(5) ~~[(7) Applicant--A person applying for a Texas nursing facility administrator (NFA) license.~~

~~[(8) Application--The notarized DADS application for licensure as a nursing facility administrator, as well as all required forms, fees, and supporting documentation.]~~

(6) ~~[(9) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.~~

(7) ~~[(10) Complaint--An allegation that an NFA [a licensed nursing facility administrator] violated one or more of the licensure rules or statutory requirements.~~

~~[(11) DADS--The Department of Aging and Disability Services.]~~

~~[(12) Deficiency--Violation of a federal participation requirement in a nursing facility.]~~

(8) ~~[(13) Domains of the National Association of Long Term Care Administrator Boards (NAB) [NAB]--The five categories for education and continuing education of the NAB [National Association of Long Term Care Administrator Boards], which are resident care and quality of life; human resources; finance; physical environment and atmosphere; and leadership and management.~~

~~[(14) Equivalent--A level of achievement that is equal in amount and quality to completion of an educational or training program.]~~

(9) ~~[(15) Formal hearing--A hearing held by the State Office of Administrative Hearings [SOAH] to adjudicate a sanction taken by HHSC [DADS] against an NFA [licensed nursing facility administrator].~~

(10) ~~[(16) Good standing--In Texas an NFA is in good standing if the NFA [The licensure status of a nursing facility administrator who] is in compliance with the rules in this chapter and, if applicable, the terms of any sanction imposed by HHSC [DADS]. An NFA licensed or registered in another state is in good standing if the NFA is in compliance with the NFA licensing or registration rules in the other state and, if applicable, the terms of any sanction imposed by the other state.~~

(11) ~~Health services executive (HSE) --An individual who has entry-level competencies of a nursing facility, assisted living community, or home and community-based service provider in this jurisdiction or another jurisdiction. The HSE has met NAB's minimum standards for qualification as an HSE.~~

~~[(12) HHSC--The Texas Health and Human Services Commission.~~

~~[(17) Informal review--The opportunity for a licensee to dispute the allegations made by DADS. The informal review includes the opportunity to show compliance.]~~

(13) ~~[(18) Internship--The [1,000-hour] training period in a nursing facility for an AIT. When HHSC accepts internship hours completed in another state, the hours must be completed in a facility that qualifies as a nursing facility or nursing home under the laws of the other state.~~

(14) ~~[(19) License--An NFA [A nursing facility administrator] license or provisional license.~~

(15) ~~[(20) Licensee--A person licensed by HHSC [DADS] as an NFA [a nursing facility administrator].~~

(16) ~~Long-term Care Regulatory--The department of HHSC responsible for long-term care regulation, including determining nursing facility compliance with licensure and certification requirements and the regulation of NFAs.~~

(17) ~~Management experience--Full-time employment as a department head, assistant nursing facility administrator, or licensed professional supervising two or more employees in a nursing facility, including a nursing facility outside of Texas, or skilled nursing hospital unit.~~

(18) ~~[(21) Military service member--A person who is on active duty.~~

(19) ~~[(22) Military spouse--A person who is married to a military service member.~~

(20) ~~[(23) Military veteran--A person who has served on active duty and who was discharged or released from active duty.~~

(21) ~~[(24) Misappropriation of resident property--Taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident [The deliberate misplacement, ex-~~

ploitation, or wrongful temporary or permanent use of a nursing facility resident's belongings or money without the resident's consent].

~~[(25) NAB--The National Association of Long Term Care Administrator Boards, which is composed of state boards or agencies responsible for the licensure of nursing facility administrators.]~~

~~(22) [(26)] NAB examination--The national examination developed by NAB that applicants must pass in combination with the state licensure examination to be issued a license to practice nursing facility administration in Texas. The NAB examination consists of two modules: Core of Knowledge and Line of Service.~~

~~(23) National Association of Long Term Care Administrator Boards (NAB)--State boards or agencies responsible for the licensure of NFAs.~~

~~(24) [(27) NCERS--The] National Continuing Education Review Service [NCERS)--The [, which is the] part of NAB that approves and monitors continuing education activities for NFAs [nursing facility administrators].~~

~~(25) Neglect--Failure to provide goods or services, including medical services, that are necessary to avoid physical or emotional harm, pain, or mental illness.~~

~~[(28) NFAAC--Nursing Facility Administrators Advisory Committee. The advisory committee described in §89.6 of this title (relating to Nursing Facility Administrator Advisory Committee).]~~

~~[(29) Neglect--A deprivation of life's necessities of food, water, or shelter; or a failure of an individual to provide services, treatment, or care to a nursing facility resident that causes or could cause mental or physical injury, harm, or death to the nursing facility resident.]~~

~~(26) [(30)] Nursing facility--A [An institution or] facility licensed in accordance with THSC Chapter 242 [by DADS as a nursing home, nursing facility, or skilled nursing facility].~~

~~(27) Nursing Facility Administrator (NFA)--An individual licensed to engage in the practice of nursing facility administration, regardless of whether the individual has an ownership interest in the facility.~~

~~(28) Nursing Facility Administrators Advisory Committee (NFAAC)--The advisory committee established by THSC §242.303 (the text of Subchapter I is effective until federal determination of failure to comply with federal regulations).~~

~~[(31) Nursing facility administrator--A person who is licensed to engage in the practice of nursing facility administration, regardless of whether the person has ownership interest in the facility.]~~

~~[(32) Opportunity to show compliance--An informal meeting between DADS and a licensee that allows the licensee an opportunity to show compliance with the requirements of law for the retention of the license. The opportunity to show compliance is part of an informal review.]~~

~~(29) [(33)] Preceptor--An NFA [A licensed nursing facility administrator] certified by HHSC [DADS] to provide supervision to an AIT.~~

~~(30) [(34)] Professional examination services (PES)--[Professional examination services.] The testing agency that administers the NAB and PES--state examinations to applicants seeking licensure as an NFA [nursing facility administrators].~~

~~(31) [(35)] Referral--A recommendation made by Long-term Care Regulatory [Services Division] staff to investigate an NFA's [administrator's] compliance with licensure requirements when~~

deficiencies or substandard quality of care deficiencies are found in a nursing facility, as required by Title 42 Code of Federal Regulations §488.325.

~~[(36) Regulatory Services Division--The division of DADS responsible for long term care regulation, including determining nursing facility compliance with licensure and certification requirements and licensing nursing facility administrators.]~~

~~(32) [(37)] Sanctions--An [Any] adverse licensure action [actions DADS imposes] against an NFA [a licensee, including letter of reprimand, suspension, revocation, denial of license, and monetary penalties]. In Texas, a sanction is one of the actions listed in §555.57 of this chapter (relating to Schedule of Sanctions).~~

~~(33) [(38)] Self-study course--A NAB-approved education course that an individual pursues independently to meet continuing education requirements for license renewal.~~

~~(34) [(39)] State examination--The state licensure examination that applicants must pass, in combination with the NAB examination, to be issued a license to practice nursing facility administration in Texas. [This examination covers the nursing facility requirements found in Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification).]~~

~~[(40) State of Texas Administrator-In-Training Internship Manual--The DADS program guide used by an AIT and preceptor during the AIT's internship for nursing facility administrator licensure.]~~

~~(35) [(41)] Substandard quality of care--For a Medicare- or Medicaid-certified facility, this term has the meaning given in Title 42 Code of Federal Regulations §488.301. For a licensed-only facility, this term has the meaning given in Texas Administrative Code, Title 40, Part 1, §19.101 [Any deficiency in Resident Behavior and Facility Practices, Quality of Life, or Quality of Care that is immediate jeopardy to nursing facility resident health or safety; or a pattern of widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm].~~

~~(36) THSC--Texas Health and Safety Code.~~

~~[(42) Survey--A resident-focused complaint/incident investigation or annual licensure or certification inspection of a nursing facility by DADS.]~~

~~(37) [(43)] Traditional business hours--Monday through Friday from 8:00 a.m. until 5:00 p.m.~~

~~§555.3. Schedule of Fees.~~

~~(a) HHSC charges the following administrative and licensure fees:~~

~~(1) application--\$100;~~

~~(2) initial license--\$250;~~

~~(3) provisional license--\$250;~~

~~(4) renewal--\$250 every two years when the license is renewed on or before the date the license expires;~~

~~(5) late renewal fees for license renewals made after the license expires:~~

~~(A) \$375 for an expired license renewed during the first 90 days after the license expires; and~~

~~(B) \$500 for an expired license renewed between 91 and 365 days after the license expires;~~

~~(6) formal inactive status--\$250;~~

(7) reinstatement of licensure--\$500; and

(8) duplicate license--\$25.

(b) Other administrative fees collected by the National Association of Long Term Care Administrator Boards (NAB) designee or contractor:

(1) National Association of Long Term Care Administrator Boards (NAB) examination--\$425

(2) NAB reexamination, including both NAB Core of Knowledge examination and Line of Service examination, in nursing home administration--\$425;

(3) NAB Core of Knowledge examination only--\$300;

(4) Line of Service examination in nursing home administration only--\$175; and

(5) state examination--\$190.

(c) All application and licensure fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.

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 April 22, 2021.

TRD-202101601

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 761-6041



26 TAC §555.4

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

The repeals implement Texas Government Code §531.0055 and §531.021, Texas Human Resources Code §32.021, and Texas Health and Safety Code §242.302.

§555.4. Schedule of Fees.

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 April 22, 2021.

TRD-202101602

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 761-6041



SUBCHAPTER B. REQUIREMENTS FOR LICENSURE

26 TAC §§555.11 - 555.16

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

The repeals implement Texas Government Code §531.0055 and §531.021, Texas Human Resources Code §32.021, and Texas Health and Safety Code §242.302.

§555.11. Academic Requirements.

§555.12. Internship Requirements.

§555.13. Alternate Education, Training, and Experience.

§555.14. Preceptor Requirements.

§555.15. Application Requirements.

§555.16. Examinations.

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 April 22, 2021.

TRD-202101606

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 761-6041



26 TAC §§555.11 - 555.18

STATUTORY AUTHORITY

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

HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

The new sections implement Texas Government Code §531.0055 and §531.021, Texas Human Resources Code §32.021, and Texas Health and Safety Code §242.302.

§555.11. Application Requirements.

(a) Except as provided in subsections (b) and (c) of this section, an applicant seeking licensure must submit to the Texas Health and Human Services Commission (HHSC):

- (1) a complete Nursing Facility Administrator's Application for Licensure form;
- (2) the application fee;
- (3) fingerprints for a Texas Department of Public Safety criminal background check;
- (4) an official transcript reflecting a baccalaureate degree from a college or university accredited by an agency recognized by the Texas Higher Education Coordinating Board;
- (5) if not a part of the transcript reflecting a baccalaureate degree, another transcript reflecting 15 semester credit hours in long-term care administration, or its equivalent, that include the five domains of the National Association of Long Term Care Administrator Boards; and
- (6) proof of completing the minimum applicable internship that meets the internship requirements in §555.13 of this subchapter (relating to Internship Requirements).

(b) If an applicant has a health services executive (HSE) qualification and is applying for a license under §555.12(a)(4) of this subchapter (relating to Licensure Requirements), the applicant must submit:

- (1) a complete Nursing Facility Administrator's Application for Licensure form;
- (2) the application fee;
- (3) proof of the HSE qualification;
- (4) fingerprints for a Texas Department of Public Safety criminal background check; and
- (5) proof that the applicant has not had a license revoked in any state.

(c) If an applicant has an NFA license issued by another state and is applying for a license under §555.12(a)(5) of this subchapter, the applicant must submit:

- (1) a complete Reciprocity Licensure Questionnaire;
- (2) the application fee;

(3) fingerprints for a Texas Department of Public Safety criminal background check; and

(4) proof of a license in good standing in another state.

(d) An application is valid for one year from the date the application fee is received.

(e) An applicant who does not meet the requirements for licensure within one year after HHSC receives the application must reapply for licensure as provided in this section.

(f) HHSC is not responsible for applications, forms, notices, and correspondence unless they are received by HHSC.

(g) HHSC is not responsible for mail it sends to a licensee or applicant if the licensee's or applicant's current address was not reported in writing to HHSC.

§555.12. Licensure Requirements.

(a) An applicant must meet one of the following groups of requirements to obtain a license as a nursing facility administrator (NFA).

(1) An applicant has a baccalaureate degree in any subject from a college or university accredited by an agency recognized by the Texas Higher Education Coordinating Board; and

(A) a minimum of 15 semester credit hours in long-term care administration, or its equivalent, that includes courses in the five domains of the National Association of Long Term Care Administrator Boards (NAB);

(B) completed a 1,000-hour internship that meets the requirements in §555.13 of this subchapter (relating to Internship Requirements); and

(C) passed the state and NAB examinations described in §555.18 of this subchapter (relating to Examinations and Requirements to Take the Examinations).

(2) An applicant has a baccalaureate degree in health administration, health services administration, health care administration, or nursing that includes coursework encompassing the five domains of the NAB; and

(A) three years of management experience;

(B) completed a 500-hour internship that meets the requirements in §555.13 of this subchapter; and

(C) passed the state and NAB examinations described in §555.18 of this subchapter.

(3) An applicant has a master's degree in health administration, health services administration, health care administration, or nursing that includes coursework encompassing the five domains of the NAB; and

(A) one year of management experience;

(B) completed a 500-hour internship that meets the requirements in §555.13; and

(C) passed the state and NAB examinations described in §555.18 of this subchapter.

(4) An applicant has a health services executive qualification; and

(A) has not had a license revoked in any state; and

(B) passed the state examination described in §555.18 of this subchapter.

(5) An applicant has a license issued by a state other than Texas and meets the requirements for licensure in paragraphs (1), (2), or (3) of this subsection.

(b) HHSC accepts foreign university degrees and coursework that is counted as transfer credit by accredited universities recognized by the American Association of Collegiate Registrars and Admissions officers.

§555.13. Internship Requirements.

(a) Except as provided in subsection (b) or (c) of this section, an applicant must complete an internship that meets the following requirements.

(1) Before an applicant starts the internship, the applicant and the applicant's preceptor must complete a Texas Health and Human Services (HHSC) internship application.

(2) The internship must be in a nursing facility that has a minimum of 60 beds, unless HHSC grants an exception to the minimum bed requirement. HHSC may consider an exception to the 60-bed requirement on a case-by-case basis. To be considered, the facility with fewer than 60 beds must be located in a rural area and more than 50 miles away from a 60-bed facility. An applicant must submit to HHSC a written request to complete an internship in a facility with fewer than 60 beds. HHSC will notify the applicant of the status of the applicant's request.

(3) A minimum of half of the internship hours must be during traditional business hours.

(4) The administrator-in-training (AIT) can train no more than 40 hours a week.

(5) If the internship is completed with a nursing facility administrator (NFA) not associated with a university as the preceptor, the AIT must complete a preceptor performance report. Additionally, the preceptor must complete an AIT final report. An AIT must complete an HHSC course in Infection Control and Personal Protective Equipment.

(6) If the internship is completed with an NFA associated with a university accredited by an agency recognized by the Texas Higher Education Coordinating Board as the preceptor, the AIT must submit an official transcript to HHSC.

(b) HHSC may accept an internship completed in another state if:

(1) the internship is part of a National Association of Long Term Care Administrator Boards-accredited program; or

(2) the internship is approved by the other state and a minimum of 1,000 hours or a minimum of 500 hours if the requirements listed in §555.12(a)(2) or (3) of this subchapter (relating to Licensure Requirements) are met. An applicant who has completed fewer than 1,000 hours of internship in another state that does not qualify for a 500-hour internship may complete the remaining hours under a preceptor.

(c) As a substitute to meeting the internship requirements described in subsection (a) or (b) of this section, an applicant may submit to HHSC proof of a health services executive (HSE) qualification and certify that the applicant has not had a license or HSE qualification revoked in any state.

(d) The AIT must submit proof of completion of the internship. HHSC will review the proof of completion and notify the applicant of the status of the applicant's request.

§555.14. Preceptor Requirements.

(a) A licensee seeking to sponsor an administrator-in-training (AIT) must:

(1) have a preceptor certification as provided in §555.15 of this subchapter (relating to Preceptor Certification); and

(2) obtain approval from the Texas Health and Human Services Commission (HHSC) to sponsor an AIT.

(b) A preceptor must submit a complete AIT Performance Report to HHSC at the end of the internship, unless the preceptor is a nursing facility administrator associated with a university recognized by the Texas Higher Education Coordinating Board.

(c) A preceptor must obtain approval from HHSC before sponsoring more than one AIT at the same time.

(d) HHSC may consider any imposed sanction as specified, in §555.57 of this chapter (relating to Schedule of Sanctions), against a preceptor as grounds for refusing to allow the preceptor to sponsor an AIT.

(e) HHSC may refuse to allow a preceptor to sponsor an AIT if the preceptor did not provide adequate training to previous AITs.

(f) HHSC waives 20 of the 40 hours of continuing education required for license renewal for a preceptor who sponsors an AIT.

(g) A licensee is qualified to act as a preceptor for two years from the date HHSC certifies the preceptor.

(h) A licensee must remain in good standing to act as a preceptor.

(i) A preceptor may be allowed to provide direct supervision or guidance of a licensee with a probated sanction as specified in §555.57 of this chapter.

§555.15. Preceptor Certification.

HHSC may issue a preceptor certification to a nursing facility administrator (NFA) who submits:

(1) proof of license or registration in good standing as an NFA for a minimum of five years, with the two most recent years in Texas;

(2) proof of completed Texas Health and Human Services approved preceptor training; and

(3) a completed preceptor application.

§555.16. Preceptor Certification Renewal.

(a) To continue acting as a preceptor, a licensee must renew a preceptor certification every two years.

(b) A licensee seeking to renew a preceptor certification must submit to HHSC:

(1) proof of license or registration as a nursing facility administrator for a minimum of five years, with the two most recent years in Texas;

(2) proof of completed Texas Health and Human Services approved preceptor training; and

(3) a completed preceptor application.

§555.17. Preceptor Denial of Certification Renewal.

The Texas Health and Human Services may deny an application for a preceptor certification or a preceptor certification renewal for the following reasons:

(1) the preceptor committed a violation listed in §555.54 of this chapter (relating to Rule or Statutory Violations); or

(2) the preceptor was convicted of a crime listed in §555.41 of this chapter (relating to Licensure of Persons with Criminal Backgrounds).

§555.18. Examinations and Requirements to Take the Examinations.

(a) Except as provided in subsection (b) of this section, an applicant seeking a license as a nursing facility administrator (NFA) from the Texas Health and Human Services Commission (HHSC) must:

(1) pass the following examinations:

(A) the state examination on nursing facility requirements in Texas;

(B) the state and NAB examinations; and

(2) have a baccalaureate degree in health administration, health services administration, health care administration, or nursing that includes coursework encompassing the five domains of the National Association of Long Term Care Administrator Boards (NAB);

(3) have three years of management experience or one year of management experience as a full-time assistant administrator; and

(4) have completed a 500-hour internship that meets the requirements in §555.13 of this subchapter (relating to Internship Requirements).

(b) An applicant who meets the academic and internship requirements by presenting evidence of a health services executive (HSE) qualification and completing a 500-hour internship, must pass the state examination.

(c) An applicant registers for examination at the designated NAB website by:

(1) submitting an application for approval to take the examination; and

(2) paying the applicable state examination and NAB examination fees on-line.

(d) HHSC sends an e-mail notifying an applicant of the applicant's eligibility to take the examinations.

(e) An applicant must not take any examination without HHSC approval.

(f) An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(g) An applicant completes the on-line state and NAB examinations at professional examination services.

(h) HHSC notifies an applicant of examination scores after receiving examination results.

(i) An applicant who fails an examination and wants to retake it must pay the appropriate state or NAB examination fee.

(j) An applicant who fails the state or NAB examination three consecutive times must complete an additional 1,000-hour administrator-in-training internship before retaking the examination.

(k) An applicant previously licensed as an NFA and whose license expired 365 or more days before the applicant reapplies for a license or who voluntarily surrendered the license must retake the state examination to obtain a new license.

(l) An applicant previously licensed as an NFA and whose license expired 365 or more days before the applicant reapplies for a li-

cence, or who voluntarily surrendered the license, must retake the NAB examination to obtain a new license if more than five years have passed since the applicant passed the NAB examination.

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 April 22, 2021.

TRD-202101604

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 761-6041



SUBCHAPTER C. LICENSES

26 TAC §§555.31 - 555.42

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

The amendments implement Texas Government Code §531.0055 and §531.021, Texas Human Resources Code §32.021, and Texas Health and Safety Code §242.302.

§555.31. Initial License.

(a) The Texas Health and Human Services Commission (HHSC) [DADS] issues a license certificate to an applicant [applicants] who:

(1) receives a [receive] passing score [scores] on the state and National Association of Long Term Care Administrator Boards [NAB] examinations;

(2) submits [submit] the [\$250] initial license fee to HHSC [DADS]; and

(3) does not have a criminal history that HHSC determines is a basis for denying the license under §555.41 [meet the requirements of §18.44] of this subchapter (relating to Licensure of Persons with Criminal Backgrounds).

(b) HHSC [DADS] may determine that a criminal conviction or a sanction taken against an applicant in Texas or another state is a basis for pending or denying an initial license.

(c) A license expires two years from the date issued.

(d) A licensee [Licensees] must keep HHSC [DADS] informed of the licensee's [their] current home address and employment address. If employed by a nursing facility, a licensee must submit a Data Change Request form to HHSC [DADS] within 30 days after a change of employment.

(e) A licensee [Licensees] who does [do] not notify HHSC [DADS] of a change in address or employment within the required 30 days may be subject to an administrative penalty as provided [listed] in §555.57 [§48.57] of this chapter (relating to Schedule of Sanctions).

§555.32. *Provisional License.*

(a) The Texas Health and Human Services Commission (HHSC) [DADS] issues a provisional license to an applicant [applicants] currently licensed or registered as a nursing facility administrator (NFA) [nursing facility administrators] in another state who submits [submit] the following to HHSC [DADS]:

(1) complete and notarized Provisional Licensure Questionnaire and Nursing Facility Administrator License Application forms;

(2) the [\$100] application fee; and

(3) the provisional license fee; and

(4) [(3)] proof of the following:

(A) a license and good standing status in another state with licensing requirements substantially equivalent to the Texas licensure requirements;

(B) employment for at least two years as an administrator of record of a nursing facility in applicant's state;

(C) a passing score on the National Association of Long Term Care Administrator Boards [NAB] examination and the state examination; and

(D) sponsorship by an NFA [administrator] licensed by HHSC [DADS] and who is in good standing, unless HHSC [DADS] waives sponsorship based on a demonstrated hardship.

(b) A provisional license expires 180 days from the date of issue.

(c) HHSC [DADS] issues an initial [a] license certificate to a provisional license holder who satisfies the requirements for a license in §555.12 of this chapter (relating to Licensure Requirements) and §555.31 of this subchapter (relating to Initial license).[:]

[(1) passes the state examination;]

[(2) pays DADS the \$250 initial licensure fee; and]

[(3) has not had a license revoked in Texas or any other state.]

(d) HHSC [DADS] may determine that a criminal conviction or sanction taken in another state is a basis for pending or denying a provisional license.

§555.33. *Duplicate License.*

The Texas Health and Human Services Commission (HHSC) [DADS] replaces lost, damaged, or destroyed license certificates for a licensee [to licensees] who submits [submit] a notarized Data Change/Duplicate License Request form and [\$25] duplicate license fee to HHSC [DADS].

§555.34. *License Renewal.*

(a) The Texas Health and Human Services Commission (HHSC)[DADS] notifies a licensee [licensees] of the [their] license

expiration date and renewal requirements at least 31 days before the license expires.

(b) A licensee who does not receive a renewal notice must renew the license before the license expires.

(c) A licensee [Licensees] seeking renewal must submit the following to HHSC, [DADS] on or before the date the license expires:

(1) a complete License Renewal form;

(2) the [\$250] renewal fee;

(3) proof of completion of 40 [e]oek] hours of continuing education, as required by §555.35 of this subchapter (relating to Continuing Education Requirements for License Renewal); and

(4) fingerprints for a Texas Department of Public Safety [a DPS Texas] criminal conviction report and fingerprint card.

(d) HHSC [DADS] uses the [postmark] date the completed renewal application is submitted online to determine if a renewal application is on time. [If there is no postmark or the postmark is not legible, DADS uses the date that the Nursing Facility Administrator Licensure Program records the renewal application as received.]

(e) HHSC [DADS] issues a two-year license renewal card to eligible licensees who meet the requirements in subsection (c) of this section.

(f) HHSC [DADS] may deny a license renewal according to §555.37 [§48.37] of this subchapter (relating to Denial of License Renewal).

§555.35. *Continuing Education Requirements for License Renewal.*

(a) The 40 [e]oek] hours of continuing education required for license renewal must:

(1) be completed during the previous two-year licensure period;

(2) include one or more of the five domains of the National Association of Long Term Care Administrator Boards (NAB) [NAB listed in §18.11 of this chapter (relating to Academic Requirements)];

(3) include a Texas Health and Human Services Commission (HHSC) course in Infection Control and personal protective equipment;

(4) [(3)] include at least six [e]oek] hours in ethics; and

(5) [(4)] be:

(A) approved by the National Continuing Education Review Service;

(B) a HHSC-sponsored [DADS-sponsored] event; or

(C) an upper-division semester credit course taken or taught at a post-secondary institution of higher education accredited by an agency [association] recognized by the Texas Higher Education Coordinating Board.

(b) HHSC [DADS] accepts [no more than 34 e]oek] hours of NAB-approved self-study courses toward the required 40 [e]oek] hours of continuing education.

(c) HHSC [DADS] waives, at a maximum, 20 of the 40 [e]oek] hours of continuing education required of [to] a licensee who completes one three-semester hour upper-division course taken at a post-secondary institution of higher education.

(d) HHSC [DADS] approves continuing education credit hours [once per licensure renewal period] for the same course, seminar, workshop, or program only once per license renewal period.

~~{(e)}~~ DADS waives 20 of the required 40 clock hours of continuing education for preceptors who sponsor an AIT.

~~{(c)}~~ ~~{(f)}~~ DADS] HHSC may perform an audit of continuing education courses, seminars, or workshops that the licensee has reported by requesting certificates of attendance.

§555.36. *Late Renewals.*

(a) A former licensee [person] has up to one year after the expiration date of a license to renew the license by:

(1) completing a license renewal application;

(2) ~~{(4)}~~ completing 40 [e]lock] hours of continuing education as provided [listed] in §555.35 [§18.35] of this subchapter (relating to Continuing Education Requirements for License Renewal); and

(3) ~~{(2)}~~ submitting the following fee to the Texas Health and Human Services Commission (HHSC) [DADS]:

(A) a \$375 late renewal fee for a license that has been expired for 90 days or less; or

(B) a \$500 late renewal fee for a license that has been expired for 91 days to 365 days.

(b) A former licensee [person] whose license has been expired for more than 365 days must meet the licensure and examination requirements for an initial license.

(c) A former licensee [person] must retake the National Association of Long Term Care Administrator Boards (NAB) examination [NAB exam] if the former licensee [person] last took and passed the NAB examination [exam] more than five years before the completed application date.

~~{(d)}~~ A person who does not renew a license on or before the date the license expires must return the license to DADS.]

~~{(d)}~~ ~~{(e)}~~ A person who fails to renew a license before the expiration date must not practice in the field of nursing facility administration until the license is renewed.

~~{(c)}~~ ~~{(f)}~~ DADS] HHSC imposes one or more sanctions listed in §555.57 [§18.57] of this chapter (relating to Schedule of Sanctions) against a person who practices with an expired license.

§555.37. *Denial of License Renewal.*

~~{(a)}~~ The Texas Health and Human Services Commission (HHSC) [DADS] may deny an application for license renewal based on either of the following:

(1) the licensee committed a violation listed in §555.54 of this chapter (relating to Rule or Statutory Violations) [a sanction taken against a licensee]; or

(2) the licensee has a criminal history that HHSC determines is a basis for denying the license renewal under §555.41 of this subchapter (relating to Licensure of Persons with Criminal Backgrounds) [a conviction for a crime listed in §18.41 of this subchapter].

~~{(b)}~~ DADS does not renew a license if:

~~{(1)}~~ a person's license was revoked in another jurisdiction;]

~~{(2)}~~ the licensee defaulted on a guaranteed student loan as addressed in the Education Code, §57.491; or]

~~{(3)}~~ the licensee did not comply with the terms of a sanction or settlement agreement with DADS.]

§555.38. *Inactive Status.*

(a) A licensee may place a license in a formal inactive status with the Texas Health and Human Services Commission (HHSC) [DADS] for up to two renewal periods.

(b) To place a license in a formal inactive status, the licensee submits the following to HHSC [DADS] on or before the date the license expires:

(1) a completed Inactive Status Application form; and

(2) the formal [\$250] inactive status fee.

(c) A licensee may [Licensees must] renew a [the inactive] license in formal inactive status on or before the date that the inactive status expires by submitting to HHSC [DADS]:

(1) the [\$250] renewal fee; and

(2) proof of completing 40 [e]lock] hours of continuing education, as provided [listed] in §555.35 [§18.35] of this chapter (relating to Continuing Education Requirements for License Renewal).

(d) If a license in formal [licensee's] inactive status expires [has expired], the licensee must meet the licensure application and examination requirements as listed in §555.11 [§18.15] of this subchapter [chapter] (relating to Application Requirements) and §555.18 [§18.16] of this chapter (relating to Examinations) to obtain a new license.

(e) If it has been less than five years since the individual passed the National Association of Long Term Care Administrator Boards (NAB) [NAB] examination, the individual is not required to take the NAB examination [referenced in §18.16(a)(2) of this chapter,] but must take the state examination [exam].

(f) A former licensee [person] whose license expires while on formal inactive status [license has expired] may not renew the license by paying [pay] a late renewal fee.

§555.39. *Voluntary Surrender of a License.*

(a) A licensee may voluntarily surrender a license by returning the license certificate to the Texas Health and Human Services Commission (HHSC) [DADS].

(b) A licensee who voluntarily surrenders a license while under investigation for a violation of licensure requirements may still receive:

(1) a written reprimand; or

(2) an administrative penalty.

(c) A licensee who voluntarily surrenders a license in lieu of a proposed sanction, other than license revocation, may not reapply for licensure until two years after the surrender date.

(d) A licensee who voluntarily surrenders a license in lieu of a proposed license revocation is permanently disqualified from licensure in Texas.

§555.40. *Reinstatement.*

An applicant [Applicants] who previously was [were] licensed and in good standing in Texas may obtain a new license without taking the examination required by §555.18 of this chapter (relating to Examinations and Requirements to Take the Examinations) [reexamination] if the applicant [they]:

(1) is [are] licensed in good standing in another state;

(2) practiced in that state for at least the preceding two years before the date of the [their] current licensure application; and

(3) pays the Texas Health and Human Services [pay] DADS] a [\$500] reactivation fee.

§555.41. *Licensure of Persons with Criminal Backgrounds.*

(a) Subject to subsection (f) of this section, the Texas Health and Human Services Commission (HHSC) may disqualify an applicant or licensee from taking an examination required by §555.18 of this chapter (relating to Examinations and Requirements to Take the Examinations), may deny an initial or renewal application for licensure, or impose:

[(a)] [DADS considers an applicant's or a licensee's conviction of a crime related to the duties, responsibilities and job performance of an administrator as a potential basis for:]

[(1) denying an initial or renewal application for licensure; and]

(2) a sanction listed in §555.57 [§18.57] of this chapter (relating to Schedule of Sanctions) if the applicant or licensee has been convicted of:

(1) an offense that directly relates to the duties and responsibilities of a nursing facility administrator (NFA);

(2) an offense listed in Article 42A.054, Code of Criminal Procedure; or

(3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(b) HHSC [DADS] considers the following when determining if a criminal conviction directly relates to the duties, [and] responsibilities, and job performance of an NFA [a nursing facility administrator]:

(1) the nature and seriousness of the crime;

(2) the extent to which a license may offer an individual an opportunity to engage in the same type of criminal activity; and

(3) the relationship of the crime to the ability or fitness required to perform the duties of an NFA [nursing facility administrator].

(c) HHSC [DADS] has determined that a conviction of the following crimes relates to nursing facility administration and reflects an inability to perform or tendency to inadequately perform as an NFA [administrator]. Accordingly, HHSC proposes to deny an application for licensure from an applicant who has been convicted of any of the following crimes:

(1) intentionally acting as an NFA [a nursing facility administrator] without a license;

(2) attempting or conspiring to commit or committing any offense under the following chapters of the Texas Penal Code:

(A) Title 5 (offenses against persons), including homicide, kidnapping, unlawful restraint, and sexual and assault offenses;

(B) Title 7 (offenses against property), including arson, criminal mischief, robbery, burglary, criminal trespass, theft, fraud, computer crimes, telecommunications crimes, money laundering, and insurance fraud;

(C) Title 9 (offenses against public order and decency), including disorderly conduct and public indecency; or

(D) Title 10 (offenses against public health, safety, and morals), including weapons, gambling, conduct affecting public health, intoxication, and alcoholic beverage offenses; [or]

(3) committing an offense listed in Texas Health and Safety Code (THSC) §250.006(a) or (c); or.

(4) committing an offense listed in THSC §250.006(b) within the last five years.

(d) If HHSC determines an applicant or licensee has a criminal conviction that directly relates to the duties and responsibilities of an NFA, HHSC considers the following in determining whether to take an action authorized by subsection (a) of this section:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of community supervision, parole or mandatory supervision; and

(7) other evidence of the person's fitness, including letters of recommendation.

[(d) DADS may consider other crimes and pertinent information as a potential basis for denying an initial or renewal application.]

(e) HHSC may consider other crimes and pertinent information as a potential basis for denying an initial or renewal application.

(f) [(e)] Convictions under federal law or the laws of another state or nation for offenses containing elements similar to offenses listed in subsection (c) of this section may be a basis for HHSC denying an initial application or [DADS] imposing sanctions.

(g) A notice required under subsection (a) of this section must contain, as applicable:

(1) a statement that the applicant or licensee is disqualified from receiving the license or being examined for the license because of the applicant's or licensee's prior conviction of an offense specified in the notice, as provided in subsection (a)(2) and (a)(3) of this section; or

(2) a statement that:

(A) the final decision of the licensing authority to deny the applicant or licensee a license, or the opportunity to be examined for the license, will be based on the factors listed in subsection (d) of this section, as provided in subsection (a)(1) of this section; and

(B) the applicant or licensee has the responsibility to obtain and provide to HHSC evidence regarding the factors listed in subsection (d) of this section.

(h) If HHSC suspends or revokes a license, or denies an applicant or licensee a license or the opportunity to be examined for a license because of the applicant's or licensee's prior conviction of an offense, HHSC shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification including any factor considered under subsection (b) and (d) of this section that served as the basis for suspension, revocation, denial, or disqualification;

(2) the procedure for judicial review; and

(3) the earliest date the applicant or licensee may appeal HHSC's action.

§555.42. *Alternate Licensing Requirements for Military Service Personnel.*

(a) Fee waiver based on military experience.

(1) The Texas Health and Human Services Commission (HHSC) [DADS] waives the application fee described in §555.11(a)(2) [§18.15(a)(2)] of this chapter (relating to Application Requirements) and the initial license fee described in §555.31(a)(2) [§18.31(a)(2)] of this chapter (relating to Initial License) for an applicant if HHSC [DADS] receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must submit a written request for a waiver with the applicant's initial license application submitted to HHSC [DADS] in accordance with §555.11 [§18.31] of this chapter. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member or military veteran that is acceptable to HHSC [DADS]; and

(B) documentation of the type and dates of the service, training, and education the applicant received, and an explanation as to why the applicant's military service, training, or education substantially meets all of the requirements for licensure under this chapter.

(3) Documentation of military status that is acceptable to HHSC [DADS] includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC [DADS] requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC [DADS] approves a request for a waiver of fees submitted in accordance with this subsection if HHSC [DADS] determines that the applicant is a military service member or a military veteran and the applicant's military service, training, or education substantially meets all of the requirements for licensure under this chapter.

(b) Fee waiver based on license issued by another jurisdiction.

(1) HHSC [DADS] waives the application fee described in §555.11(a)(2) [18.15(a)(2)] of this chapter and the provisional initial license fee described in §555.32(a)(3) [§18.32(e)(2)] of this chapter (relating to Provisional License) for an applicant if HHSC [DADS] receives and approves a request for a waiver of fees in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must include a written request for a waiver of fees with the applicant's provisional license application that is submitted to HHSC [DADS] in accordance with §555.32 [§18.32] of this chapter. The applicant must include with the request documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to HHSC [DADS].

(3) Documentation of military status that is acceptable to HHSC [DADS] includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC [DADS] requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC [DADS] approves a request for a waiver of fees submitted in accordance with this subsection if HHSC [DADS] determines that:

(A) the applicant holds a license in good standing in another jurisdiction with licensing requirements substantially equivalent to the requirements for a license under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(c) Additional time for license renewal.

(1) HHSC [DADS] gives a nursing facility administrator (NFA) [an administrator] an additional two years to complete the license renewal requirements described in §555.43 [§18.34] of this subchapter (relating to License Renewal) and §555.35 [§18.35] of this subchapter (relating to Continuing Education Requirements for License Renewal), if HHSC [DADS] receives and approves a request for additional time to complete the licensing renewal requirements from an NFA [administrator] in accordance with this subsection.

(2) To request additional time to complete license renewal requirements, an NFA must:

(A) submit a written request for additional time to HHSC before the expiration date of the NFA's license; and

(B) include with the request, documentation of the NFA's status as a military service member that is acceptable to HHSC, which includes a copy of a current military service order issued to the NFA by the armed forces of the United States, the State of Texas, or another state.

{(2) To request additional time to complete license renewal requirements, an administrator must submit a written request for additional time to DADS before the expiration date of the administrator's license. The administrator must include with the request documentation of the administrator's status as a military service member that is acceptable to DADS. Documentation as a military service member that is acceptable to DADS includes a copy of a current military service order issued to the administrator by the armed forces of the United States, the State of Texas, or another state.}

(3) If HHSC [DADS] requests additional documentation, the NFA [administrator] must submit the requested documentation.

(4) HHSC [DADS] approves a request for two additional years to complete license renewal requirements submitted in accordance with this subsection if HHSC [DADS] determines that the NFA [administrator] is a military service member, except HHSC [DADS] does not approve a request if HHSC [DADS] granted the NFA [administrator] a previous extension and the NFA [administrator] has not completed the license renewal requirements during the two-year extension period.

(5) If an NFA [administrator] does not submit the written request described by paragraph (2) of this subsection before the expiration date of the NFA's [administrator's] license, HHSC [DADS] will consider a request after the expiration date of the license if the NFA [administrator] establishes to the satisfaction of HHSC [DADS] that

the request was not submitted before the expiration date of the NFA's [administrator's] license because the NFA [administrator] was serving as a military service member at the time the request was due.

(d) Credit toward internship requirements.

(1) HHSC [DADS] gives an applicant credit toward the internship requirements for an administrator-in-training (AIT) [AIT] described in §555.13 [§18.12] of this chapter (relating to Internship Requirements) based on the applicant's military service, training, or education if HHSC [DADS] receives and approves a request for credit from an applicant in accordance with this subsection.

(2) To request credit for military service, training, or education, the applicant must submit a written request for credit to HHSC [DADS] with the applicant's initial license application. The applicant must include, with the request, documentation of the type and dates of the service, training, and education the applicant received and an explanation as to how the applicant's military service, training, or education is substantially similar to the training or education requirements described in §555.13 [§18.12] of this chapter.

(3) If HHSC [DADS] requests additional documentation, the applicant must submit the requested documentation.

(4) HHSC [DADS] approves a request for credit submitted in accordance with this subsection if HHSC [DADS] determines that the military service, training, or education that the applicant received is substantially similar to the training or education requirements described in §555.12 [§18.12] of this chapter (relating to Licensure Requirements).

(e) Renewal of expired license.

(1) HHSC [DADS] renews an expired license if HHSC [DADS] receives and approves a request for renewal from a former NFA [administrator] in accordance with this subsection.

(2) To request renewal of an expired license, a former NFA [administrator] must submit a written request with a license renewal application within five years after the former NFA's [administrator's] license expired. The former NFA [administrator] must include with the request documentation of the former administrator's status as a military service member, military veteran, or military spouse that is acceptable to HHSC [DADS].

(3) Documentation of military status that is acceptable to HHSC [DADS] includes:

(A) for status as a military service member, a copy of a current military service order issued to the former NFA [administrator] by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former NFA [administrator] by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former NFA [administrator] by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former NFA's [administrator's] spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC [DADS] requests additional documentation, the former NFA [administrator] must submit the requested documentation.

(5) HHSC [DADS] approves a request for renewal of an expired license submitted in accordance with this subsection if HHSC [DADS] determines that:

(A) the former NFA [administrator] is a military service member, military veteran, or military spouse;

(B) the former NFA [administrator] has not committed an offense listed in Texas Health and Safety Code (THSC) §250.006(a) and has not committed an offense listed in THSC §250.006(b) during the five years before the date the former NFA [administrator] submitted the initial license application; and

(C) the former NFA [administrator] is not listed on the employee misconduct registry described in THSC Chapter 253.

(f) Recognition of Out-of-State License of Military Spouse.

(1) A military spouse may engage in the practice of nursing facility administration in Texas without obtaining a license, as required by §555.31 of this subchapter (relating to Initial License) or §555.32 of this subchapter (relating to Provisional License), if the spouse:

(A) is currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements for a license in Texas;

(B) notifies HHSC in writing of the spouse's intent to practice in Texas;

(C) submits to HHSC proof of the spouse's residence in this state and a copy of the spouse's military identification; and

(D) receives from HHSC:

(i) confirmation that HHSC has verified the spouse's license in the other jurisdiction; and

(ii) a license to practice nursing facility administration in Texas.

(2) HHSC will review and evaluate the following criteria when determining whether another state's licensing requirements are substantially equivalent to the requirement for a license under the statutes and regulations of this state:

(A) whether the other state requires an applicant to pass an examination that demonstrates competence in the field to obtain the license;

(B) whether the other state requires an applicant to meet any experience qualifications to obtain the license;

(C) whether the other state requires an applicant to meet education qualifications to obtain the license;

(D) whether the other state denies an application for licensure from an applicant who has been convicted of an offense containing elements similar to offenses listed in §555.41(c) of this subchapter; and

(E) the other state's license requirements, including the scope of work authorized to be performed under the license issued by the other state.

(3) The military spouse must submit:

(A) a written request to HHSC for recognition of the spouse's license issued by the other state;

(B) any form and additional information regarding the license issued by the other state required by the rules of the specific program or division within HHSC that licenses the business or occupation;

(C) proof of residence in this state;

(D) a copy of the military spouse's identification card;

(E) proof the military service member is stationed at a military installation in Texas; and

(F) fingerprints for a Texas Department of Public Safety criminal background check to enable HHSC to confirm that the military spouse is in compliance with other laws and regulations applicable to nursing facility administration in Texas.

(4) Upon verification from the licensing jurisdiction of the military spouse's license and if the license is substantially equivalent to a Texas license, HHSC shall issue a confirmation that HHSC has verified the spouse's license in the other jurisdiction and a license to practice nursing facility administration in Texas.

(5) The license issued under paragraph (4) of this subsection will expire three years from date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever comes first. The license issued under paragraph (4) of this subsection may not be renewed.

(6) HHSC replaces a lost, damaged or destroyed license certificate for a military spouse as provided in §555.33 of this subchapter (relating to Duplicate License), but the military spouse does not pay the duplicate license fee.

(7) The military spouse shall comply with all applicable laws, rules and standards of this state, including applicable Texas Health and Safety Code and all relevant Texas Administration Code provision.

(8) HHSC may withdraw or modify the verification letter for reasons including the following:

(A) the military spouse fails to comply with paragraph (1)(D)(i) of this subsection; or

(B) the military spouse's licensure required under subsection (c)(1) of this section expires or is suspended or revoked in another jurisdiction.

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 April 22, 2021.

TRD-202101605

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 761-6041



SUBCHAPTER D. REFERRALS, COMPLAINT PROCEDURES, AND SANCTIONS

26 TAC §§555.51 - 555.57

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the author-

ity 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, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

The amendments implement Texas Government Code §531.0055 and §531.021, Texas Human Resources Code §32.021, and Texas Health and Safety Code §242.302.

§555.51. *Referral and Complaint Procedures.*

(a) The Texas Health and Human Services Commission (HHSC) [DADS' Professional Credentialing Enforcement Unit] receives and investigates referrals and complaints.[:]

{(1) referrals from Regulatory Services Division regional staff to determine an administrator's compliance with licensure requirements when survey findings cite deficiencies or substandard quality of care; and}

{(2) complaints alleging an administrator violated one or more of the licensure rules}.

(b) Persons wanting to file a complaint against a licensee may contact HHSC by [the Professional Credentialing Enforcement Unit]:

(1) [by] calling HHSC at the telephone numbers on the HHSC website; [(512) 438-5495; or]

(2) emailing the complaint to HHSC using the email address on the HHSC website; [by writing the Department of Aging and Disability Services, Professional Credentialing Enforcement Unit, Mail Code E-302, ATTN: NEA Complaint Investigations, P.O. Box 149030, Austin, TX 78714-9030.]

(3) faxing the complaint to HHSC using the fax number on the HHSC website; or

(4) mailing the complaint to HHSC at the mailing address on the HHSC website.

(c) HHSC [DADS] sends a Nursing Facility Administrator Complaint form to persons wanting to file a complaint. The complainant must complete, sign, and return the form to HHSC [DADS].

(d) If a referral or complaint is received, HHSC [the Professional Credentialing Enforcement Unit] notifies the licensee and, if applicable, the person filing the complaint of the:

- (1) alleged rule violation;
- (2) assigned case number; and
- (3) investigator contact information.

(e) HHSC [DADS] investigates referrals and complaints by first determining if a complaint is within HHSC's [Professional Credentialing Enforcement Unit] authority to investigate, then by engaging in one or more of the following investigative activities:

- (1) reviewing pertinent documentation maintained by the facility, including financial and resident medical records;
- (2) gathering additional evidence, including licensee and witness statements;

(3) determining licensee culpability for survey or investigative findings; and

(4) utilizing the services of a private investigator when special circumstances exist.

(f) HHSC [DADS] keeps records confidential in accordance with state and federal law.

(g) HHSC [DADS] prioritizes complaints as follows:

(1) Priority one complaints allege physical abuse, sexual abuse, neglect, serious injury, death, or immediate jeopardy to resident health or safety. Investigations are initiated within 24 hours of receipt or by the next working day.

(2) Priority two complaints allege all other types of misconduct by the licensee. Investigations are initiated within 30 days of receipt.

(h) After the investigation is complete, a final report with supporting documentation is given to the Nursing Facility Administrators Advisory Committee (NFAAC) [NFAAC] for review and a recommendation [consideration] on the appropriate action.

(i) After evaluating the NFAAC's recommendation, HHSC decides [DADS makes a decision] to:

- (1) impose a sanction;
- (2) collect additional information; or
- (3) dismiss the case.

(j) HHSC [DADS] notifies the licensee and, if applicable, the person filing a complaint of the status and final outcome of a complaint or referral.

§555.52. *Informal Reviews.*

(a) Before the Texas Health and Human Services Commission (HHSC) [DADS] initiates proceedings to revoke a license, suspend a license, or deny a license renewal, HHSC [DADS] gives a licensee:

(1) a description of the alleged rule violation warranting the proposed sanction; and

(2) the option to:

(A) request an informal review to demonstrate that the licensee did not violate nursing facility administrator (NFA) licensure rules or commit the alleged violation; or

(B) request a formal hearing; or

(C) ~~[(B)]~~ accept the sanction.

(b) A licensee's request for an informal review must:

(1) be received by HHSC [DADS] within 10 calendar days after the licensee receives the notice letter from HHSC [DADS]; and

(2) contain documentation that refutes the allegations.

(c) HHSC [DADS] conducts the informal review:

(1) by telephone;

(2) in person; or

(3) by reviewing the licensee's written response and supporting evidence.

(d) HHSC [DADS] provides the licensee with official notice of the outcome of the informal review.

§555.53. *Formal Hearings.*

(a) The Texas Health and Human Services Commission (HHSC) [DADS] gives a licensee a formal hearing notice if:

(1) HHSC [DADS] proposes a sanction; or

(2) HHSC [DADS] upholds or modifies a proposed sanction after an informal review, in accordance with §555.52 [§18.52] of this subchapter (relating to Informal Reviews).

(b) The formal hearing notice to the licensee includes:

(1) a description of the alleged rule violations warranting the proposed sanction;

(2) HHSC [DADS] decision to uphold or modify the sanction if the notice is issued after an informal review; and

(3) the option for the licensee to:

(A) accept the sanction; or

(B) request a formal hearing no later than 20 days after receiving the formal hearing notice from HHSC [DADS].

(c) If the licensee does not accept a modified sanction resulting from an informal review, the hearing notice may be for the original sanction HHSC proposed before the informal review.

(d) ~~[(e) DADS]~~ HHSC imposes a sanction against a licensee if:

(1) the licensee accepts the decision from HHSC [DADS] to impose the sanction;

(2) the administrative law judge upholds the proposed sanction from HHSC [DADS] after the formal hearing; or

(3) the licensee does not request a hearing within 20 days after receiving the formal hearing notice from HHSC [DADS].

(e) ~~[(d)]~~ A hearing is governed by Texas Administrative Code, Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Title 40, Chapter 91 (relating to Hearings Under the Administrative Procedure Act) [† TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act)].

§555.54. *Rule or Statutory Violations.*

The Texas Health and Human Services Commission (HHSC) [DADS] may impose a sanction [sanctions] listed in §555.57 [§18.57] of this subchapter (relating to Schedule of Sanctions) against a licensee on proof of any of [for] the following grounds [violations]:

(1) the licensee willfully or repeatedly violated a provision of Texas Health and Safety Code, Chapter 242, or a rule in this chapter;

(2) the licensee willfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a nursing facility of which the licensee is a nursing facility administrator (NFA) [an administrator];

(3) the licensee obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;

(4) the licensee's use of alcohol or drugs creates a hazard to the residents of a facility;

(5) a judgment of a court of competent jurisdiction finds that the licensee lacks capacity under the laws of Texas [is mentally incapacitated];

(6) the licensee has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude;

(7) the licensee has been convicted in a court of competent jurisdiction of an offense listed in §555.41(c) [§18.41(e)] of this chapter (relating to Licensure of Persons with Criminal Backgrounds); ~~including an offense listed in Texas Health and Safety Code, §250.006; or]~~

(8) the licensee has been negligent or incompetent in the licensee's duties as an NFA [a nursing facility administrator.];

(9) the licensee had an NFA license revoked in another jurisdiction; or

(10) the licensee did not comply with the terms of a sanction or settlement agreement with HHSC.

§555.55. Violations of Standards of Conduct.

(a) The Texas Health and Human Services Commission (HHSC) ~~[DADS]~~ may impose a sanction listed in §555.57 [§18.57] of this subchapter (relating to Schedule of Sanctions) against a licensee for violations of the following nursing facility administrator (NFA) Standards of Conduct:

(1) A licensee must employ sufficient staff to adequately meet the needs of nursing facility residents as determined by care outcomes.

(2) A licensee must ensure that sufficient resources are present to provide adequate nutrition, medications, and treatments to nursing facility residents in accordance with physician orders as determined by care outcomes.

(3) A licensee must promote and protect the rights of nursing facility residents and ensure that employees, contractors, and others respect the rights of residents.

(4) A licensee must ensure that nursing facility residents remain free of chemical and physical restraints unless required by a physician's order to protect a nursing facility resident's health and safety.

(5) A licensee must report and direct nursing facility staff to report to the appropriate government agency any suspected case of abuse, neglect, or misappropriation of resident property as defined in §555.2 [§18.2] of this chapter (relating to Definitions).

(6) A licensee must ensure that the nursing facility is physically maintained in a manner that protects the health and safety of the residents and the public.

(7) A licensee must notify and direct employees to notify an appropriate government agency of any suspected cases of criminal activity as defined by state and federal laws.

(8) A licensee must post in the nursing facility where the licensee is employed the notice provided by HHSC [DADS] that gives the address and telephone number for reporting complaints against an NFA [administrator]. The notice must be posted in a conspicuous place and in clearly legible type.

(9) A licensee must not knowingly or through negligence commit, direct, or allow actions that result or could result in inadequate care, harm, or injury to a nursing facility resident.

(10) A licensee must not knowingly or through negligence allow a nursing facility employee [employees] to harm a nursing facility resident [residents] by coercion, threat, intimidation, solicitation, harassment, theft of personal property, or cruelty.

(11) A licensee must not knowingly or through negligence allow or direct an employee [employees] to contradict or alter in any manner the orders of a physician regarding a nursing facility resident's medical or therapeutic care.

(12) A licensee must not knowingly commit or through negligence allow another individual to commit an act of abuse, neglect, or misappropriation of resident property as defined in §555.2 [§18.2] of this chapter.

(13) A licensee must not permit another individual to use his or her license or allow a nursing facility to falsely post his or her license.

(14) A licensee must not advertise or knowingly participate in the advertisement of nursing facility services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(15) A licensee must not knowingly allow, aid, or abet a violation by another NFA [licensed nursing facility administrator] of the Texas Health and Safety Code, Chapter 242, Subchapter I (text of Subchapter I effective until federal determination of failure to comply with federal regulations), or the agency's rules adopted under that subchapter and must report such violations to HHSC [DADS].

(16) A licensee must not make or allow an employee, contractor, or volunteer [employees, contractors, or volunteers] to make misrepresentations or fraudulent statements about the operation of a nursing facility.

(17) A licensee must not allow an employee's, a contractor's, or another person's action or inaction to result in harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular health agency or facility.

(18) A licensee must not falsely bill for goods or services or allow another person to bill for goods or services other than those that have actually been delivered [rendered].

(19) A licensee must not make or file a false report [reports] or allow an employee, contractor, or volunteer to make or file a report that the licensee knows to be false.

(20) A licensee must not intentionally fail to file a report or record required by state or federal law, impede or obstruct such filings, or induce another person to impede or obstruct such filings.

(21) A licensee must not use or knowingly allow employees or others to use alcohol, narcotics, or other drugs in a manner that interferes with the performance of the licensee's [administrator's] or other person's duties.

(22) A licensee must not knowingly or through negligence violate any confidentiality provisions [as] prescribed by state or federal law concerning a nursing facility resident.

(23) A licensee must not interfere with or impede an investigation by withholding or misrepresenting facts [fact] to HHSC [DADS] representatives, or by using threats or harassment against any person involved or participating in the investigation.

(24) A licensee must not display a license issued by HHSC [DADS] that is reproduced, altered, expired, suspended, or revoked.

(25) A licensee must not, knowingly or through negligence, allow an employee [employees] or other individual [individuals] to mismanage a resident's personal funds deposited with the nursing facility.

(26) A licensee must not harass or intimidate an employee or other representative [employees] of HHSC [DADS], other government agencies, or their representatives concerning the administration of the nursing facility.

(27) A licensee must not offer or give any gift, loan, or other benefit to a person working for HHSC [DADS] unless the benefit

is offered or given on account of kinship or a personal relationship independent of the official status of the person working for HHSC [DADS].

(b) Negligence, as referenced in the Standards of Conduct in subsection (a) of this section, means the failure of a licensee to use such care as a reasonably prudent and careful licensee would use in similar circumstances, or failure to act as a reasonably prudent licensee would in similar circumstances.

§555.56. *Violations by Unlicensed Persons.*

(a) A person [Persons] with an expired license must not engage in activities that require a license.

(b) A person practicing as a licensed nursing facility administrator after license expiration:

(1) commits an offense punishable as a Class B misdemeanor;

(2) is subject to local criminal prosecution; and

(3) may be referred to the Office of Attorney General for civil penalties not to exceed \$1,000 per violation per day for each day the violation continues.

(c) A licensee whose license expires before an investigation is complete, may still receive:

(1) a written reprimand; or

(2) an administrative penalty.

(d) A licensee allowing a license to expire instead of accepting a proposed license revocation is permanently disqualified from licensure in Texas.

(e) A person with an expired license must return the license certificate to the Texas Health and Human Services Commission within ten (10) days of expiration [DADS].

§555.57. *Schedule of Sanctions.*

(a) The Texas Health and Human Services Commission (HHSC) [DADS] may impose one or more of the following sanctions against a licensee for a violation [violations] listed in §555.54 [~~§18.54~~] of this subchapter (relating to Rule or Statutory Violations) or §555.55 [~~and §18.55~~] of this subchapter (relating to Violations of Standards of Conduct):

(1) ~~[revocation of]~~ license revocation;

(2) license suspension;

(3) denial of application for license renewal;

(4) assessment of an administrative penalty;

(5) written letter of reprimand;

(6) participation ~~[requiring a licensee to participate]~~ in continuing education; ~~[or]~~

(7) probation; ~~[r]~~

(8) denial of preceptor's initial or renewal application; or

(9) revocation of preceptor status.

(b) If a sanction is probated, HHSC [DADS] may require the licensee to:

(1) report regularly to HHSC [DADS] on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by HHSC [DADS];

(3) practice under the direct supervision or guidance of a HHSC certified [DADS-certified] preceptor, as specified in §555.14 of this chapter (relating to Preceptor Requirements); or

(4) complete prescribed continuing education until the licensee attains a degree of skill satisfactory to HHSC [DADS] in those areas that are the basis of the probation.

(c) Civil penalties may result from a referral to the Office of Attorney General not to exceed \$1,000 per violation per day for each day the violation continues.

(d) Administrative penalties may not exceed \$1,000 per violation per day for each day the violation continues.

(e) The amount of the administrative penalty ~~[is]~~ assessed is based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of prohibited acts; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) economic harm to property or environment;

(3) history of previous violations;

(4) amount necessary to deter future violations;

(5) efforts to correct the violations;

(6) the severity level of the violation:

(A) Level I--\$500 to \$1,000 for violations that have or had an adverse impact on nursing facility resident health or safety that includes serious harm, permanent injury, or death to a nursing facility resident;

(B) Level II--\$250 to \$500 for violations that have or had a potential or adverse impact on the health or safety of a nursing facility resident, but less impact than Level I; or

(C) Level III--\$250 or less for violations having minimal or no significant impact on nursing facility resident health or safety; and

(7) any other matter that justice may require.

(f) HHSC may deny, suspend, or revoke a license to practice in Texas if the licensee fails to meet and comply with all terms of an HHSC order or settlement agreement, or fails to complete any final sanction imposed against the licensee's license, including, satisfactory and timely completion of any continuing education requirements, suspension, probated suspension under a certified preceptor, or timely payment in full of administrative penalties.

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 April 22, 2021.

TRD-202101607

Karen Ray
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 761-6041



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety (the department) proposes amendments to §4.1, concerning Transportation of Hazardous Materials. The proposed amendments harmonize updates to Title 49, Code of Federal Regulation with those laws adopted by Texas.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does limit an existing regulation. It does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed

rule is in effect, the proposed rule should positively impact the state's economy.

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, *et seq.*, and Texas Transportation Code, Chapter 644, will hold a public hearing on Wednesday, June 2, 2021 at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.1 regarding Transportation of Hazardous Materials, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, 179 (Subpart E), and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through June 1, 2021 [~~January 1, 2018~~]. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through June 1, 2021 [~~January 1, 2018~~].

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will have the following meanings, unless the context clearly indicates otherwise. [~~be defined as follows:~~]

(A) Motor carrier--Has the meaning assigned by [the definition of motor carrier will be the same as that given in] Texas Transportation Code, §643.001(6).~~;~~]

(B) Hazardous material shipper--A [hazardous material shipper means a] consignor, consignee, or beneficial owner of a shipment of hazardous materials.[;]

(C) Interstate or foreign commerce--All [interstate or foreign commerce will include all] movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state.[;]

(D) Department--The [department means the] Texas Department of Public Safety.[;]

(E) Federal Motor Carrier Safety Administration (FMCSA) field administrator--The [FMCSA field administrator, as used in the federal motor carrier safety regulations, means the] director of the Texas Department of Public Safety or the designee of the director for vehicles operating in intrastate commerce.[;]

(F) Farm vehicle--Any [farm vehicle means any] vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch.[; and]

(G) Private carrier--Any [private carrier means any] person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who transports by commercial motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of commerce.

(2) All references in Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, 179 (Subpart E), and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(3) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm. The usage of non-specification farm tank trailers by motor carriers to transport anhydrous ammonia must be in compliance with Title 49, Code of Federal Regulations, §173.315(m).

(4) The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, §171.15 and §171.16 for shipments of hazardous materials by highway is adopted by the department.

(5) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to an intrastate motor carrier transporting a flammable liquid petroleum product in a cargo tank. The usage of non-specification cargo tanks by motor carriers for the intrastate transportation of flammable liquid petroleum products must be in compliance with Title 49, Code of Federal Regulations, §173.8.

(6) Regulations and exceptions adopted herein are applicable to all drivers and vehicles transporting hazardous materials in interstate, foreign, or intrastate commerce.

(7) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(8) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code, Chapter 644, and §4.16 of this title (relating to Administrative Penalties, Payment, Collection, and Settlement of Penalties).

(9) A peace officer certified, in accordance with §4.13 of this title (relating to Authority to Enforce, Training and Certificate Requirements), to enforce the Federal Hazardous Material Regulations, as adopted in this section, may declare a vehicle out-of-service using the North American Standard Hazardous Materials Out-of-Service Criteria as a guideline.

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 April 23, 2021.

TRD-202101629

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 424-5848



SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.11

The Texas Department of Public Safety (the department) proposes amendments to §4.11, concerning General Applicability and Definitions. The proposed amendments harmonize updates to Title 49, Code of Federal Regulation with those laws adopted by Texas.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed

rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does limit an existing regulation. It does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should positively impact the state's economy.

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, *et seq.*, and Texas Transportation Code, Chapter 644, will hold a public hearing on Wednesday, June 2, 2021 at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.11 regarding General Applicability and Definitions, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385 - 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through June 1, 2021 [~~June 1, 2020~~]. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through June 1, 2021 [~~June 1, 2020~~]. The rules detailed in this section ensure:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely;

(4) commercial motor vehicle operators are qualified, by reason of training and experience, to operate the vehicle safely; and

(5) the minimum levels of financial responsibility for motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce is maintained as required.

(b) Certain terms, when used in the federal motor carrier safety regulations as adopted in subsection (a) of this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Motor carrier--Has the meaning assigned by Texas Transportation Code, §643.001(6) when vehicles operated by the motor carrier meet the applicability requirements of subsection (c) of this section.

(2) Hazardous material shipper--A consignor, consignee, or beneficial owner of a shipment of hazardous materials.

(3) Interstate or foreign commerce--All movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state.

(4) Department--The Texas Department of Public Safety.

(5) Director--The director of the Texas Department of Public Safety or the designee of the director.

(6) Federal Motor Carrier Safety Administration (FMCSA)--The director of the Texas Department of Public Safety for vehicles operating in intrastate commerce.

(7) Farm vehicle--Any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture commodities, farm machinery, and farm supplies to or from a farm or ranch.

(8) Commercial motor vehicle--Has the meaning assigned by Texas Transportation Code, §548.001(1) if operated intrastate; commercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, §390.5 if operated interstate.

(9) Foreign commercial motor vehicle--Has the meaning assigned by Texas Transportation Code, §648.001.

(10) Agricultural commodity--Has the meaning as defined in Title 49, Code of Federal Regulations, §395.2 and includes wood chips.

(11) Planting and harvesting seasons--Are January 1 to December 31.

(12) Producer--A person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper.

(13) Off-road motorized construction equipment--Includes, but is not limited to, motor scrapers, backhoes, motor graders, compactors, excavators, tractors, trenchers, bulldozers, and other similar equipment routinely found at construction sites and that is occasionally moved to or from construction sites by operating the equipment short distances on public highways. Off-road motorized construction equipment is not designed to operate in traffic and such appearance on a public highway is only incidental to its primary func-

tions. Off-road motorized construction equipment is not considered to be a commercial motor vehicle as that term is defined in Texas Transportation Code, §644.001.

(14) The phrase "The commercial driver's license requirements of part 383 of this subchapter" as used in Title 49, Code of Federal Regulations, §382.103(a)(1) shall mean the commercial driver's license requirements of Texas Transportation Code, Chapter 522.

(15) For purposes of removal from safety-sensitive functions for prohibited conduct as described in Title 49, Code of Federal Regulations, §382.501(c), commercial motor vehicle means a vehicle subject to the requirements of Texas Transportation Code, Chapter 522 and a vehicle subject to §4.22 of this title (relating to Contract Carriers of Certain Passengers), in addition to those vehicles enumerated in Title 49, Code of Federal Regulations, §382.501(c).

(c) Applicability.

(1) The FMCSA regulations are applicable to the vehicles detailed in subparagraphs [subparagraph] (A) - (G) of this paragraph:

(A) a vehicle or combination of vehicles with an actual gross weight or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle or combination of farm vehicles with an actual gross weight or a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) a vehicle designed or used to transport more than 15 passengers, including the driver;

(D) a vehicle transporting hazardous material requiring a placard;

(E) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States;

(F) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers; and

(G) a covered farm vehicle as defined in Texas Transportation Code, §522.004 and in Title 49, Code of Federal Regulations, §390.5 qualifies for the commercial driver license (CDL) exemption only when a gross vehicle weight (GVW) or gross vehicle weight rating (GVWR), whichever is greater, of more than 26,001 lbs. is operated in intrastate commerce. All other covered farm vehicle exemptions apply in intrastate commerce at a GVW or GVWR of 48,000 lbs. or more.

(2) The regulations contained in Title 49, Code of Federal Regulations, §392.9a, and all interpretations thereto, are applicable to motor carriers operating exclusively in intrastate commerce and to the intrastate operations of interstate motor carriers that have not been federally preempted by the United Carrier Registration Act of 2005. The term "operating authority" as used in Title 49, Code of Federal Regulations, §392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapter 643, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, §392.9a may request a review under §4.18 of this title (relating to Intrastate Operating Authority Out-of-Service Review). All costs associated with the towing and storage of a vehicle and load declared out-of-service under this paragraph shall be the responsibility of the motor carrier and not the department or the State of Texas.

(3) All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385 - 387, 390 - 393 and 395 - 397, and all interpretations thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(4) A medical examination certificate, issued in accordance with Title 49, Code of Federal Regulations, §§391.14, 391.41, 391.43, and 391.45, shall expire on the date indicated by the medical examiner; however, no such medical examination certificate shall be valid for more than two years from the date of issuance.

(5) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

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 April 23, 2021.

TRD-202101630

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 424-5848



SUBCHAPTER C. COMMERCIAL VEHICLE REGISTRATION AND INSPECTION ENFORCEMENT

37 TAC §4.37

The Texas Department of Public Safety (the department) proposes amendments to §4.37, concerning Acceptance of Out-of-State Commercial Vehicle Inspection Certificate. The proposed amendments are necessary to harmonize updates to 49 CFR with those laws adopted by Texas. These changes will also allow enforcement officers to recognize "self-inspected" commercial vehicles in Texas, harmonizing Texas law with the national standard.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy,

a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does limit an existing regulation. It does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should positively impact the state's economy.

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, *et seq.*, and Texas Transportation Code, Chapter 644, will hold a public hearing on Wednesday, June 2, 2021 at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.37 regarding Acceptance of Out-of-State Commercial Vehicle Inspection Certificate, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.37. Acceptance of Out-of-State Commercial Vehicle Inspection Certificate.

(a) Texas-registered commercial vehicles. Acceptance of commercial vehicle inspection certificates issued outside of Texas. A valid commercial vehicle inspection certificate issued in a jurisdiction having an inspection program that has been certified by the Federal Motor Carrier Safety Administration under the provisions of Title 49, Code of Federal Regulations, §396.23(b)(1) as meeting the requirements of §396.17 is acceptable on a Texas-registered commercial vehicle.

(b) Out-of-state registered commercial vehicles. Commercial vehicles required to be registered in Texas will be required to be inspected at an official commercial vehicle inspection station and obtain a vehicle identification certificate, Form VI-30-A, before the registration process can be completed. Valid out-of-state inspection certificates will not be honored on commercial vehicles required to be registered.

(c) Exceptions of inspections only by state-certified and supervised inspection stations. Acceptance in this state of a certificate of inspection and approval issued in compliance with 49 C.F.R. Part 396 to a motor bus, as defined by Transportation Code, §502.001, that is registered in this state but is not domiciled in this state.

(d) Jurisdictions certified under the provisions of Title 49, Code of Federal Regulations, §396.23(b)(1). The following jurisdictions have been certified by the Federal Motor Carrier Safety Administration as meeting the requirements of Title 49, Code of Federal Regulations, §396.23(b)(1): Alabama (LPG Board), California, Connecticut (Bus Inspection Program), District of Columbia, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio (Bus Inspection Program), Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin (Bus Inspection Program), or any of the ten Canadian Provinces and the Yukon Territory.

(e) The department authorizes the acceptance in this state of a certificate of inspection and approval issued by an inspector qualified under 49 C.F.R. Part 396 acting as an employee or authorized agent of the owner of a commercial fleet as defined in Transportation Code, §502.001. This includes a motor vehicle or trailer that is part of the fleet and registered or in the process of being registered in 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 April 23, 2021.

TRD-202101631

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 6, 2021

For further information, please call: (512) 424-5848



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

The Texas Workforce Commission (TWC) proposes the following new sections to Chapter 815, relating to Unemployment Insurance:

Subchapter A. General Provisions, §815.4

Subchapter F. Extended Benefits, §815.175

TWC proposes amendments to the following sections of Chapter 815, relating to Unemployment Insurance:

Subchapter G. CARES Act Provisions, §§815.180 - 815.185

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 815 rule change is in accordance with:

--the Families First Coronavirus Response Act (FFCRA), Public Law (P.L.) 116 - 127, which contained Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISSA), enacted March 18, 2020;

--the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), P.L. 116 - 136, enacted March 27, 2020;

--the Consolidated Appropriations Act, 2021, P.L. 116 - 260, enacted December 27, 2020, which contained the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act or CAA);

--the American Rescue Plan Act of 2021 (ARPA), P.L. 117 - 2, enacted March 11, 2021, which contained Title IX, Subtitle A, Crisis Support for Unemployed Workers Part 1, Extension of CARES Act Unemployment Provisions and Part 2, Extension of FFCRA Unemployment Provisions; and

--Texas Labor Code, §209.025.

FFCRA provided states with emergency funding grants for the administration of their unemployment compensation (UC) programs to assist states with the unprecedented claim volumes associated with COVID-19. Along with these grants, FFCRA also provided for full federal funding for state Extended Benefits (EB).

The CARES Act provided for new entitlement programs including Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), Federally Reimbursed Waiting Week (FRWW), and Pandemic Unemployment Assistance (PUA).

The CAA amended the CARES Act in multiple ways, including allowing states the option to waive PUA overpayments, providing for the creation of a new Mixed Earner Unemployment Compensation (MEUC) program, and adding new requirements concerning the coordination of programs.

ARPA provided for an extension of CARES Act and CAA programs.

New Options and Authority

In terms of new options and authority included in the CAA, §201(d) of the CAA modified §2102(d) of the CARES Act to include an option for states to waive PUA overpayments if certain requirements are met. Previously, each CARES Act program contained a provision for the waiver of overpayments with the exception of PUA. TWC operationalized these requirements through administrative rulemaking in §815.12 and §815.183.

To take advantage of the optional waiver authority, TWC proposes to amend Chapter 815, Subchapter G, to incorporate the authority to waive certain PUA overpayments. As the statutory

requirements for PUA waivers in the CAA are the same as those for the CARES Act program waivers, TWC similarly plans to operationalize these waivers through §815.12 and §815.183.

Section 261 of the CAA added the MEUC program to §2104 of the CARES Act. MEUC operates similarly to another CARES Act program, FPUC, in that it is an additional payment to a claimant who is eligible for at least one dollar of underlying benefit.

However, there are differences between MEUC and FPUC. To receive MEUC, a claimant must apply for MEUC and be found eligible before MEUC payments may begin. MEUC provides \$100 each week, in addition to FPUC, to certain claimants who meet monetary eligibility requirements. Additionally, MEUC is not payable to claimants receiving PUA.

TWC has elected to operate the MEUC program and therefore proposes to amend Chapter 815, Subchapter G to include MEUC.

Coordination of Programs

Current §815.181 addresses the coordination of CARES Act programs. Section 206 of the CAA modified the program coordination provisions in §2107 of the CARES Act. As a result, TWC proposes to amend §815.181 to reflect these new requirements.

First, under certain circumstances, a claimant who is collecting PEUC and becomes eligible for a new benefit year of regular UC may be able to continue collecting PEUC instead of filing the new regular UC claim as is normally required under coordination rules. As authorized by the CAA and extended by ARPA, a claimant may be eligible to receive PEUC instead of regular UC if all of the following four criteria are met:

--I: The individual has been determined to be entitled to PEUC with respect to a benefit year;

--II: The benefit year with respect to which the PEUC entitlement had been established (that is, the parent claim) has expired after the date of the CAA enactment;

--III: The individual has remaining entitlement to PEUC with respect to such benefit year; and

--IV: The individual would qualify for regular UC in a subsequent (new) benefit year and the weekly benefit amount for regular UC in the new benefit year would be at least \$25 less than the weekly benefit amount payable on the individual's PEUC claim.

The CAA provided states with four options for choosing how to coordinate PEUC with regular UC under the new provision. TWC has determined that State Option One is best suited for operationalization in Texas. State Option One provides for establishing a new benefit year for the claimant but deferring payment of the new regular UC claim until the PEUC claim has been exhausted. TWC chose this option previously when a similar amendment was made to the Emergency Unemployment Compensation provisions of 2008 during the Great Recession.

Additionally, both the CAA and ARPA provided extensions of the PEUC program. Both extensions contained a requirement that a claimant who was collecting EB at the time the additional PEUC amount became available stay on EB, rather than transition back to PEUC. Instead, the individual must exhaust the existing EB entitlement before reverting to PEUC. This applies to the weeks in which the CAA and ARPA were passed.

Furthermore, both the CAA and ARPA also provided a state option that a claimant's eligibility for EB be considered to include any week that begins after the individual exhausts all rights to

PEUC and that falls during an EB period that began after the date the individual exhausted all rights to PEUC. This applies even if the individual's benefit year has expired, provided the state is in an EB period as of the date the individual exhausts PEUC. As noted below, Texas Labor Code, §209.025 provides TWC with the authority to maximize the receipt of any fully funded federal extended unemployment benefits. TWC is exercising this option and including it in proposed §815.181.

Finally, TWC has added that in operationalizing these requirements, TWC may further amend the dates in §815.181 in response to federal statute or regulation. This will allow TWC to quickly respond to any subsequent changes to federal statutes or regulations amending the dates relating to the coordination of these programs.

Additional Provisions

Texas Labor Code, §209.025 provides that "Notwithstanding any other provision of this subchapter, the Commission by rule may adjust the extended benefit eligibility period as necessary to maximize the receipt of any fully funded federal extended unemployment benefits, if full federal funding for those benefits is available."

Section 266 of the CAA also provided a state option to disregard the requirement of §203(b)(1)(B) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 USC §3304 note) that "no extended benefit period may begin before the fourteenth week after the close of a prior extended benefit period with respect to such State." Currently, this flexibility applies between November 1, 2020, and December 31, 2021.

To ensure that TWC maximizes the federal funding, TWC proposes the flexibility provided by §266 of the CAA with a retroactive provision and generally applicable language should this flexibility be extended into the future. This rule also accounts for possible future situations where the fourteen-week period is reduced but not eliminated. This provision is applicable to the Insured Unemployment Rate and the Total Unemployment Rate triggers.

Additionally, the U.S. Department of Labor has determined that a 15 percent fraud penalty does apply to PUA. Therefore, PUA is removed from the 15 percent fraud penalty exception in §815.185(a). Section 815.185(a) is also amended in case additional guidance or regulations are forthcoming in this area.

Finally, §815.184 is amended with respect to how CARES Act programs benefits will be offset. TWC will deduct 50 percent per each single deduction of the amount of FPUC, FRWW, MEUC, PEUC, or PUA otherwise payable to the claimant for a benefit overpayment. Section 303(g) of the Social Security Act requires these programs be offset to repay benefit overpayments; however, the U.S. Department of Labor has limited the amount of FPUC, FRWW, MEUC, PEUC, or PUA that can be offset to 50 percent of the benefit payment. Offsetting regarding state programs such as regular state benefits is still governed by state law, including §212.006 and §214.002 of the Act, but with additional flexibility.

Conformity with Federal Law

Lastly, TWC adds a federal conformity provision to Chapter 815, Subchapter A. This provision ensures that if federal statutes or regulations change before TWC has a reasonable opportunity to amend its rules, TWC will continue to operate in conformity with federal law.

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 PROVISIONS

TWC proposes the following new section to Subchapter A:

Section 815.4. Conformity with Federal Law

New §815.4 provides that, notwithstanding any other provision of Chapter 815, if the U.S. Secretary of Labor holds that a provision of Chapter 815 does not conform with federal statute or regulation, TWC may administer Chapter 815 to conform with the federal statute or regulation until it has a reasonable opportunity to amend the nonconforming provision.

SUBCHAPTER F. EXTENDED BENEFITS

TWC proposes the following new section to Subchapter F:

Section 815.175. Federal Waiver to Preserve Access to Extended Benefits

New §815.175 states that pursuant to Texas Unemployment Compensation Act, §209.025, if full federal funding for EB is available and TWC is permitted to reduce or eliminate the number of weeks between the end of an extended benefit period and the beginning of a new extended benefit period required by the Extended Unemployment Compensation Act of 1970, §203(b)(1)(B), TWC shall reduce or eliminate the number of weeks accordingly to maximize the receipt of any fully funded federal EB. Section 815.175 operates retroactively, if applicable.

SUBCHAPTER G. CARES ACT PROVISIONS

TWC proposes the following amendments to Subchapter G:

Section 815.180. Definitions

Section 815.180 is amended to add new paragraph (4), which defines MEUC as the Mixed Earner Unemployment Compensation provisions of §2104 of the CARES Act. Current paragraphs (4) and (5) are renumbered as paragraphs (5) and (6).

Section 815.181. Coordination of CARES Act

Section 815.181 is amended to add new subsections (c) - (h), which further dictate the coordination of programs, especially how they relate to PEUC, EB, and MEUC.

New §815.181(c) provides that if a claimant is receiving PEUC, EB, or PUA, and becomes eligible for regular compensation, the claimant must stop collecting PEUC, EB, or PUA and file a new claim for regular compensation, with the following exception: For a claimant whose regular compensation benefit year expires after December 27, 2020, if the claimant is entitled to, and has a remaining entitlement to, PEUC with respect to that benefit year, TWC shall establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all PEUC payable with respect to the prior benefit year if the individual's weekly benefit amount of regular compensation in the new benefit year is at least \$25 less than the individual's weekly benefit amount on the PEUC claim.

New §815.181(d) provides that a claimant who is receiving EB for the week of unemployment that includes December 27, 2020, or the week ending March 13, 2021, shall not be eligible for PEUC until the individual has exhausted all rights to EB.

New §815.181(e) states that for weeks of unemployment beginning January 3, 2021, a claimant's eligibility for EB shall be considered to include any week that begins after the individual exhausts all rights to PEUC and that falls during an EB period that began after the date the individual exhausted all rights to PEUC. This applies even if the claimant's benefit year has expired, provided the state is in an EB period as of the date the individual exhausts PEUC.

New §815.181(f) replaces current §815.181(c). It still provides that FPUC provides for additional compensation to a claimant collecting regular compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the Texas Unemployment Compensation Act, Trade Readjustment Allowances (TRA), and Disaster Unemployment Assistance (DUA), and that claimants will receive FPUC payments concurrently with payments under these programs. The last sentence referencing dates for FPUC has been removed.

New §815.181(g) provides that MEUC provides for additional compensation to a claimant collecting regular compensation, PEUC, EB, a Shared Work program under Chapter 215 of the Texas Unemployment Compensation Act, TRA, and DUA. It does not provide additional compensation to a claimant collecting PUA. Claimants will receive MEUC payments concurrently with payments under these programs.

New §815.181(h) provides that in operationalizing these requirements, TWC may further amend the dates in §815.181 in response to federal statute or regulation.

Section 815.182. Appeals

Section 815.182 is amended to add MEUC to §815.182(a) - (c).

Section 815.183. Waiver

Section 815.183 is amended to remove subsection (b). References to PUA and MEUC as being federal extended unemployment compensation programs and therefore subject to §815.12 have been added.

Section 815.184. Overpayments

Section 815.184 is amended to add MEUC to subsection (a) and former subsection (c) as well as to remove the PUA waiver prohibition from subsection (b). Former subsection (c) is re-lettered to subsection (d). Subsections (a) and (b) are amended to remove the last sentence. Proposed subsection (c) clarifies that TWC shall deduct 50 percent per each single deduction of the amount of FPUC, FRWW, MEUC, PEUC, or PUA otherwise payable to the claimant to recover an overpayment.

Section 815.185. Fraud

Section 815.185 is amended to add MEUC to subsections (a) and (b) and remove PUA from subsection (a). Subsection (a) is also amended to note that its provisions stand unless otherwise conflicting with federal statute or regulation.

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 under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking, as discussed elsewhere in this preamble, is to ensure conformity and compliance with federal law with respect to extended unemployment compensation programs, including under the CARES Act, CAA, and ARPA, to maximize the state's ability to take advantage of full federal funding, and to incorporate flexibilities and options offered under federal law.

The proposed rulemaking will not create any additional burden on private real property. The proposed rulemaking 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 proposed rules will be in effect:

- the rules will not create or eliminate a government program;
- implementation of the rules will not require the creation or elimination of employee positions;
- implementation of the rules will not require an increase or decrease in future legislative appropriations to TWC;
- the rules will not require an increase or decrease in fees paid to TWC;

- the rules will not create a new regulation;
- the rules will not expand, limit, or eliminate an existing regulation;
- the rules will not change the number of individuals subject to the rules; and
- the rules will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as the rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of 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.

Clay Cole, Director, Unemployment Insurance Division, and Paul Carmona, Director, Regulatory Integrity Division, have 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 ensure that Texas remains eligible to receive full federal extended unemployment benefits during the COVID-19 pandemic and its aftermath.

PART IV. PUBLIC COMMENT

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §815.4

STATUTORY AUTHORITY

This rule is proposed under:

- Texas Labor Code, §209.025, which provides TWC with authority to adopt rules necessary to maximize the receipt of any fully federally funded extended unemployment benefits, if full federal funding of those benefits is available; and
- Texas Labor Code, §301.0015(a)(6), which provides 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 proposed rule affects Texas Labor Code, Title 4.

§815.4. Conformity with Federal Law.

Notwithstanding any other provision of this chapter, if the U.S. Secretary of Labor holds that a provision of this chapter does not conform with federal statute or regulation, the Agency may administer this chapter to conform with the federal statute or regulation until the Commission has a reasonable opportunity to amend the nonconforming provision.

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 April 20, 2021.

TRD-202101571

Les Trobman
 General Counsel
 Texas Workforce Commission
 Earliest possible date of adoption: June 6, 2021
 For further information, please call: (512) 689-9855



SUBCHAPTER F. EXTENDED BENEFITS

40 TAC §815.175

STATUTORY AUTHORITY

This rule is proposed under:

- Texas Labor Code, §209.025, which provides TWC with authority to adopt rules necessary to maximize the receipt of any fully federally funded extended unemployment benefits, if full federal funding of those benefits is available; and
- Texas Labor Code, §301.0015(a)(6), which provides 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 proposed rule affects Texas Labor Code, Title 4.

§815.175. Federal Waiver to Preserve Access to Extended Benefits.
Pursuant to §209.025 of the Act, if full federal funding for Extended Benefits is available and the Agency is permitted to reduce or eliminate the number of weeks between the end of an extended benefit period and the beginning of a new extended benefit period required by §203(b)(1)(B) of the Extended Unemployment Compensation Act of 1970, the Agency shall reduce or eliminate the number of weeks accordingly to maximize the receipt of any fully funded federal Extended Benefits. This section operates retroactively, if applicable.

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 April 20, 2021.

TRD-202101573

Les Trobman
 General Counsel
 Texas Workforce Commission
 Earliest possible date of adoption: June 6, 2021
 For further information, please call: (512) 689-9855



SUBCHAPTER G. CARES ACT PROVISIONS

40 TAC §§815.180 - 815.185

STATUTORY AUTHORITY

These rules are proposed under:

- Texas Labor Code, §209.025, which provides TWC with authority to adopt rules necessary to maximize the receipt of any fully federally funded extended unemployment benefits, if full federal funding of those benefits is available; and
- Texas Labor Code, §301.0015(a)(6), which provides 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 proposed rules affect Texas Labor Code, Title 4.

§815.180. *Definitions.*

The following definitions shall apply to this subchapter:

(1) CARES Act--refers to the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116 - 136; TITLE II--Assistance for American Workers, Families, and Businesses; Subtitle A--Unemployment Insurance Provisions.

(2) FPUC--refers to the Federal Pandemic Unemployment Compensation provisions of §2104 of the CARES Act.

(3) FRWW--refers to the Federally Reimbursed Waiting Week provisions of §2105 of the CARES Act.

(4) MEUC--refers to the Mixed Earner Unemployment Compensation provisions of §2104 of the CARES Act.

(5) [(4)] PEUC--refers to the Pandemic Emergency Unemployment Compensation provisions of §2107 of the CARES Act.

(6) [(5)] PUA--refers to the Pandemic Unemployment Assistance provisions of §2102 of the CARES Act.

§815.181. *Coordination of CARES Act Programs.*

(a) For a claimant who is eligible for regular compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-servicemembers (UCX), the following order of payment applies:

(1) The claimant must first apply for and receive regular compensation. The amount and duration of these benefits are as defined by the Act;

(2) if the claimant exhausts regular compensation, the claimant may then be eligible to receive PEUC;

(3) if the claimant exhausts PEUC and the state has "triggered on" to Extended Benefits (EB) under Chapter 209 of the Act, the claimant may then be eligible to receive EB;

(4) if the State is not "triggered on" to EB or the claimant exhausts EB, the claimant may then be eligible to receive PUA. If the State "triggers on" to EB during the period in which the claimant is collecting PUA and the claimant has not previously exhausted entitlement to EB for the respective benefit year, then the claimant must stop collecting PUA and file for EB; and

(5) the claimant meets the qualifications to receive Trade Readjustment Allowances (TRA), such benefits will be payable after regular compensation, PEUC, and EB if "triggered on," but prior to PUA.

(b) For a claimant who is not eligible for regular compensation, PEUC, EB, or TRA, and who meets the federal requirements, the claimant may be eligible to collect PUA.

(c) If a claimant is receiving PEUC, EB, or PUA, and becomes eligible for regular compensation, the claimant must stop collecting PEUC, EB, or PUA and file a new claim for regular compensation, with the following exception: For a claimant whose regular compensation benefit year expires after December 27, 2020, if the claimant is entitled to, and has a remaining entitlement to, PEUC with respect to that benefit year, the Agency shall establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all PEUC payable with respect to the prior benefit year if the individual's weekly benefit amount of regular compensation in the new benefit year is at least \$25 less than the individual's weekly benefit amount on the PEUC claim.

(d) A claimant who is receiving EB for the week of unemployment that includes December 27, 2020, or the week ending March 13,

2021, shall not be eligible for PEUC until the individual has exhausted all rights to EB.

(e) For weeks of unemployment beginning January 3, 2021, a claimant's eligibility for EB shall be considered to include any week that begins after the individual exhausts all rights to PEUC and that falls during an EB period that began after the date the individual exhausted all rights to PEUC. This applies even if the claimant's benefit year has expired, provided the state is in an EB period as of the date the individual exhausts PEUC.

(f) [(e)] FPUC provides for additional compensation to a claimant collecting regular compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the Act, TRA, and Disaster Unemployment Assistance (DUA). Claimants will receive FPUC payments concurrently with payments under these programs. [This applies for the benefit week ending April 4, 2020 through the benefit week ending July 25, 2020 unless subsequently amended by federal law.]

(g) MEUC provides for additional compensation to a claimant collecting regular compensation, PEUC, EB, a Shared Work program under Chapter 215 of the Act, TRA, and DUA. It does not provide additional compensation to a claimant collecting PUA. Claimants will receive MEUC payments concurrently with payments under these programs.

(h) In operationalizing these requirements, the Agency may further amend the dates in this section in response to federal statute or regulation.

§815.182. *Appeals.*

(a) A claimant may appeal an adverse FPUC, FRWW, MEUC, PEUC, or PUA determination pursuant to the provisions and timeframes of Chapter 212 of the Act and the provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages).

(b) An employer is not a "party of interest,"[;] pursuant to §815.15(c) of this chapter (relating to Parties with Appeal Rights), to an [a] FPUC, FRWW, MEUC, PEUC, or PUA determination and therefore does not have appeal rights. An employer may appear at an [a] FPUC, FRWW, MEUC, PEUC, or PUA hearing to offer evidence when appropriate.

(c) When considering an appeal involving FPUC and/or MEUC, the Appeal Tribunal and the Commission shall look to the merits of the denial of the underlying benefit when determining eligibility for FPUC and/or MEUC payments.

§815.183. *Waiver.*

[(a)] FPUC, [the] FRWW, MEUC, PEUC, and PUA [and PEUC] are federal extended unemployment compensation programs and therefore subject to §815.12 of this chapter (relating to Waiver of Repayment and Recovery of Federal Extended Unemployment Compensation Overpayments).

[(b)] PUA, as provided by P.L. 116 - 136 §2102, is related to Disaster Unemployment Assistance programs regulated under Title 20, Part 625, Code of Federal Regulations. Therefore, PUA does not constitute a federal extended unemployment compensation program and the waiver provisions of §815.12 of this chapter do not apply.]

§815.184. *Overpayments.*

(a) Unless an [a] FPUC, FRWW, MEUC, or PEUC overpayment is otherwise recovered[;] or [is] waived, the Agency shall, during

the three-year period after the date the claimant received the payment of FPUC, FRWW, MEUC, or PEUC to which the claimant was not entitled, recover the overpayment by deductions from any sums payable to the claimant. [No single deduction may exceed 50 percent of the amount otherwise payable to the claimant.]

(b) Unless a PUA overpayment is otherwise recovered or waived, the Agency shall recover the overpayment by deductions from any sums payable to the claimant. A PUA overpayment [may not be waived per §815.183(b) of this chapter and] is not subject to the three-year period limitation stated in subsection (a) [subsection(a)] of this section. [No single deduction may exceed 50 percent of the amount otherwise payable to the claimant.]

(c) The Agency shall deduct 50 percent per each single deduction of the amount of FPUC, FRWW, MEUC, PEUC, or PUA otherwise payable to the claimant to recover an overpayment.

(d) [(e)] If a claimant has an unemployment benefits overpayment with an appropriate agency in another state, and the Agency has a reciprocal arrangement with that other state agency under §211.004 of the Act, the Agency shall deduct 50 percent per each single deduction of the amount of FPUC, FRWW, MEUC, PEUC, or PUA otherwise payable to the claimant.

§815.185. *Fraud.*

(a) Unless otherwise conflicting with federal statute or regulation, a [A] penalty for fraudulently obtaining benefits under §214.003 of the Act shall not apply to fraudulently obtained FPUC, FRWW, MEUC, and PEUC[; and PUA] benefits forfeited.

(b) The Agency and the Commission shall examine the underlying payment or statement which precipitated the fraud determination when examining FPUC and/or MEUC fraud.

(c) In determining disqualification for fraud under PUA, the provisions of 20 CFR [C.F.R.] §625.14(i) shall apply.

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 April 20, 2021.

TRD-202101574

Les Trobman

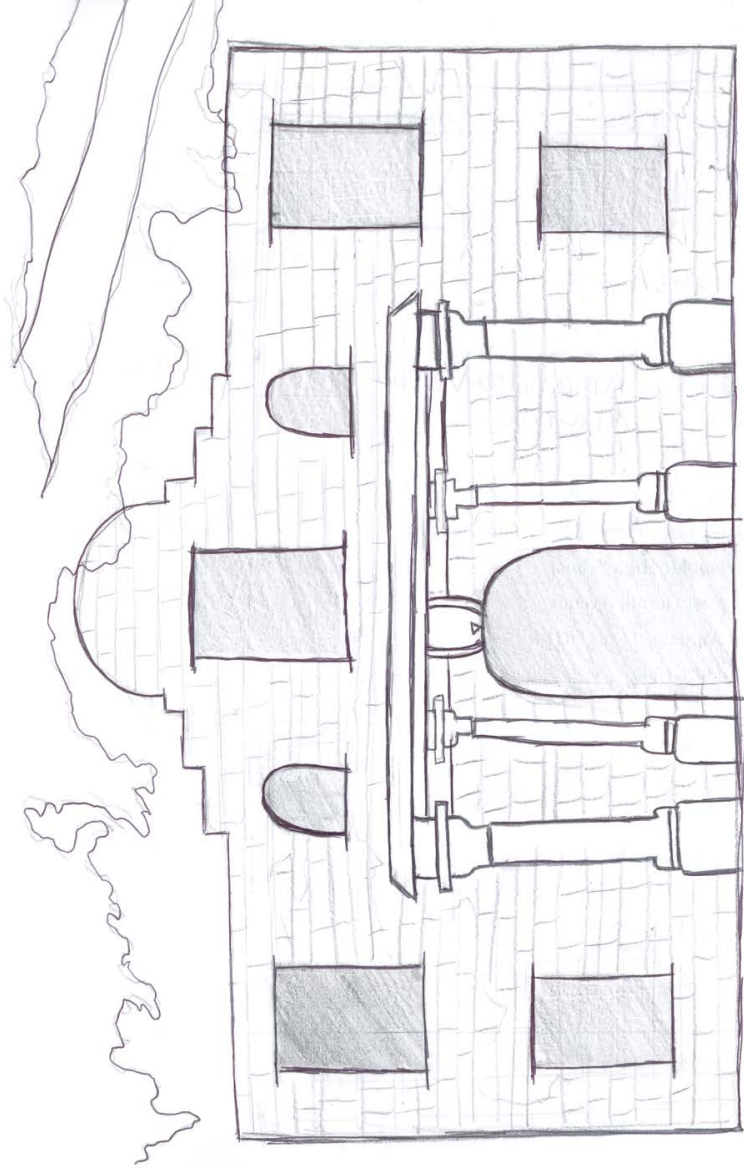
General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 6, 2021

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 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 §551.47, which appeared in the April 9, 2021, issue of the *Texas Register* (46 TexReg 2281).

Filed with the Office of the Secretary of State on April 23, 2021.

TRD-202101638

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: April 23, 2021

For further information, please call: (512) 438-3161



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 §553.2003, which appeared in the April 9, 2021, issue of the *Texas Register* (46 TexReg 2287).

Filed with the Office of the Secretary of State on April 23, 2021.

TRD-202101636

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: April 23, 2021

For further information, please call: (512) 438-3161



CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER CC. COVID-19 EMERGENCY RULE

26 TAC §554.2803

The Health and Human Services Commission withdraws the emergency adoption of new §554.2803, which appeared in the April 2, 2021, issue of the *Texas Register* (46 TexReg 2118).

Filed with the Office of the Secretary of State on April 23, 2021.

TRD-202101634

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: April 23, 2021

For further information, please call: (512) 438-3161



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 Health and Human Services Commission withdraws the emergency adoption of the new §558.950, which appeared in the April 16, 2021, issue of the *Texas Register* (46 TexReg 2521).

Filed with the Office of the Secretary of State on April 23, 2021.

TRD-202101640

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: April 23, 2021

For further information, please call: (512) 438-3161



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 Department of Aging and Disability Services withdraws the emergency adoption of new §9.198 and §9.199 which appeared

in the April 2, 2021, issue of the *Texas Register* (46 TexReg 2122).

Filed with the Office of the Secretary of State on April 23, 2021.

TRD-202101632

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: April 23, 2021

For further information, please call: (512) 438-3161



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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 391. PURCHASE OF GOODS AND SERVICES BY THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §§391.101, 391.103, 391.201, 391.203, 391.205, 391.207, 391.209, 391.211, 391.213, 391.215, 391.301, 391.401, 391.403, 391.405, 391.407, 391.409, 391.501, 391.503, 391.505, 391.601, 391.603, 391.605, 391.621, 391.623, 391.625, 391.627, 391.629, 391.631, 391.633, 391.635, 391.637, 391.651, 391.653, 391.655, 391.657, 391.659, 391.661, 391.663, 391.665, 391.667, 391.669, and 391.711; and new §§391.101, 391.103, 391.105, 391.107, 391.201, 391.203, 391.205, 391.207, 391.209, 391.211, 391.213, 391.215, 391.217, 391.219, 391.241, 391.243, 391.301, 391.303, 391.305, 391.307, 391.309, 391.401, 391.403, 391.405, 391.501, 391.503, 391.601, 391.603, 391.605, 391.701, 391.703, 391.705, 391.721, 391.723, 391.725, 391.727, 391.729, 391.731, 391.733, 391.735, 391.737, 391.751, 391.753, 391.755, 391.757, 391.759, 391.761, 391.763, 391.765, 391.767 and 391.769, concerning Purchase of Goods and Services by the Texas Health and Human Services Commission.

New §§391.305 and 391.307 are adopted with changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1131). These rules will be republished.

The repeal of §§391.101, 391.103, 391.201, 391.203, 391.205, 391.207, 391.209, 391.211, 391.213, 391.215, 391.301, 391.401, 391.403, 391.405, 391.407, 391.409, 391.501, 391.503, 391.505, 391.601, 391.603, 391.605, 391.621, 391.623, 391.625, 391.627, 391.629, 391.631, 391.633, 391.635, 391.637, 391.651, 391.653, 391.655, 391.657, 391.659, 391.661, 391.663, 391.665, 391.667, 391.669, and 391.711 and new §§391.101, 391.103, 391.105, 391.107, 391.201, 391.203, 391.205, 391.207, 391.209, 391.211, 391.213, 391.215, 391.217, 391.219, 391.241, 391.243, 391.301, 391.303, 391.309, 391.401, 391.403, 391.405, 391.501, 391.503, 391.601, 391.603, 391.605, 391.701, 391.703, 391.705, 391.721, 391.723, 391.725, 391.727, 391.729, 391.731, 391.733, 391.735, 391.737, 391.751, 391.753, 391.755, 391.757, 391.759, 391.761, 391.763, 391.765, 391.767 and 391.769 are adopted without changes to the proposed text as published in the February 19, 2021, issue

of the *Texas Register* (46 TexReg 1131). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal and new rules are adopted as the result of a comprehensive review of Chapter 391 to ensure HHSC's purchasing rules are current and comply with State of Texas procurement and contracting laws and rules regarding state agency procurement and contracting. After review, it was determined that significant revisions were needed throughout the chapter to update the rules and to effectively reorganize them for better clarity and flow. The adopted rules reorganize and update the sections to accurately define and describe the solicitation and contracting methods used for purchases delegated to HHSC in Texas Government Code §2155.144. The adopted rules also include non-substantive edits, revisions, and updates to citations throughout the chapter.

COMMENTS

The 31-day comment period ended March 22, 2021.

During this period, HHSC did not receive any comments regarding the proposed rules.

HHSC revised §391.305 and §391.307 to provide for electronic submission of protests and protest appeals, rather than mail or in-person delivery.

SUBCHAPTER A. INTRODUCTION

1 TAC §391.101, §391.103

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101608

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



SUBCHAPTER B. CONTRACTS

1 TAC §§391.201, 391.203, 391.205, 391.207, 391.209, 391.211, 391.213, 391.215

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101610

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



SUBCHAPTER C. EXCEPTIONS

1 TAC §391.301

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101611

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 12, 2021
Proposal publication date: February 19, 2021
For further information, please call: (512) 406-2500



SUBCHAPTER D. PROTESTS

1 TAC §§391.401, 391.403, 391.405, 391.407, 391.409

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101612

Karen Ray
Chief Counsel

Texas Health and Human Services Commission
Effective date: May 12, 2021
Proposal publication date: February 19, 2021
For further information, please call: (512) 406-2500



SUBCHAPTER E. STANDARDS OF CONDUCT FOR VENDORS AND HHSC PROCUREMENT AND CONTRACTING PERSONNEL

1 TAC §§391.501, 391.503, 391.505

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101613

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 12, 2021
Proposal publication date: February 19, 2021
For further information, please call: (512) 406-2500



SUBCHAPTER F. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT CLAIMS AGAINST HHSC DIVISION 1. GENERAL

1 TAC §§391.601, 391.603, 391.605

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101614

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



DIVISION 2. NEGOTIATION

1 TAC §§391.621, 391.623, 391.625, 391.627, 391.629, 391.631, 391.633, 391.635, 391.637

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construc-

tion projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101615

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



DIVISION 3. MEDIATION

1 TAC §§391.651, 391.653, 391.655, 391.657, 391.659, 391.661, 391.663, 391.665, 391.667, 391.669

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a

manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101616

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



SUBCHAPTER G. HISTORICALLY UNDERUTILIZED BUSINESSES

1 TAC §397.711

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101617

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§391.101, 391.103, 391.105, 391.107

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101618

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



SUBCHAPTER B. PROCUREMENT AND SPECIAL CONTRACTING METHODS

DIVISION 1. PROCUREMENT METHODS

1 TAC §§391.201, 391.203, 391.205, 391.207, 391.209, 391.211, 391.213, 391.215, 391.217, 391.219

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101619

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



DIVISION 2. SPECIAL CONTRACTING METHODS

1 TAC §391.241, §391.243

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101620

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



SUBCHAPTER C. PROTESTS

1 TAC §§391.301, 391.303, 391.305, 391.307, 391.309

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

§391.305. *Filing of a Protest.*

(a) To be considered timely, the protest must be filed:

(1) no later than the date that responses to a solicitation are due, if the protest concerns the solicitation; or

(2) no later than 10 business days after the notice of intent to award or, in the event of no notice of intent to award, after the notice of award, if the protest concerns the evaluation or award.

(b) A protestant must file a protest with the Deputy Executive Commissioner of Procurement and Contracting Services, Texas Health and Human Services Commission, by electronic mail submission to HHSC_PCS_Protest@hhs.texas.gov.

(c) A protest must contain:

(1) a specific identification of the statutory or regulatory provision that the protestant alleges has been violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision identified in the protest;

(3) a precise statement of the relevant facts, including sufficient documentation that the protest has been timely filed and a description of the resulting adverse impact to the protestant;

(4) a statement of any issues of law or fact that the protestant contends must be resolved; and

(5) a statement of the argument and authorities that the protestant offers in support of the protest.

§391.307. *Review and Disposition of Protests.*

(a) Upon receipt of a protest, the Deputy Executive Commissioner of Procurement and Contracting Services may:

(1) dismiss the protest if:

(A) it is not timely; or

(B) it does not meet the requirements of §391.305 of this subchapter (relating to Filing of a Protest);

(2) solicit written responses to the protest from other interested parties; or

(3) attempt to resolve the protest by mutual agreement.

(b) The Deputy Executive Commissioner of Procurement and Contracting Services may confer with the HHSC Chief Counsel at any time during the review of the protest.

(c) If the protest is not dismissed or resolved by mutual agreement, the Deputy Executive Commissioner of Procurement and Contracting Services will issue a written determination on the protest.

(1) If the Deputy Executive Commissioner of Procurement and Contracting Services determines that no violation of the specific statutory or regulatory provision cited by the protestant has occurred, they shall so inform the protestant and other interested parties by letter that sets forth the reasons for the determination.

(2) If the Deputy Executive Commissioner of Procurement and Contracting Services determines that HHS violated the specific statutory or regulatory provision cited by the protestant in a case where HHS has not awarded a contract, they shall so inform the protestant and other interested parties by letter that sets forth the reasons for the determination and any appropriate remedial action.

(3) If the Deputy Executive Commissioner of Procurement and Contracting Services determines that HHS violated the specific statutory or regulatory provision cited by the protestant in a case where HHS awarded a contract, they shall so inform the protestant and other interested parties by letter that sets forth the reasons for the determination, which may include ordering the contract void.

(4) The Deputy Executive Commissioner of Procurement and Contracting Services' written determination is the final administrative action by HHSC on a protest filed under this subchapter unless the protestant files an appeal of the determination under subsection (d) of this section.

(d) The protestant may appeal the Deputy Executive Commissioner of Procurement and Contracting Services' determination on a protest to the HHSC Executive Commissioner. The appeal must be in writing and submitted by electronic mail to HHSCExecutiveCommissioner@hhs.texas.gov no later than 10 business days after the date of the Deputy Executive Commissioner of Procurement and Contracting Services' determination. The appeal shall be limited to review of the Deputy Executive Commissioner of Procurement and Contracting Services' determination. The protestant must mail or deliver copies of the appeal to other interested parties, and each copy must contain a certified statement that such copies have been provided.

(1) A protest or appeal that is not timely filed shall not be considered unless good cause for delay is shown or the HHSC Executive Commissioner determines that an appeal raises issues that are significant to HHSC's procurement practices or procedures in general.

(2) The HHSC Executive Commissioner may confer with the HHSC Chief Counsel at any time during the review of the appeal.

(3) The HHSC Executive Commissioner will review the appeal of the Deputy Executive Commissioner of Procurement and Contracting Services' determination and render a final decision on the protest issues.

(4) A decision issued in writing by the HHSC Executive Commissioner shall be the final administrative action of HHSC on a protest determination that is appealed under this subchapter.

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 April 22, 2021.

TRD-202101621

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



SUBCHAPTER D. STANDARDS OF CONDUCT FOR VENDORS

1 TAC §§391.401, 391.403, 391.405

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101622

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



SUBCHAPTER E. HISTORICALLY UNDERUTILIZED BUSINESSES

1 TAC §§391.501, §391.503

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101624

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 12, 2021
Proposal publication date: February 19, 2021
For further information, please call: (512) 406-2500



SUBCHAPTER F. CONTRACTS

1 TAC §§391.601, 391.603, 391.605

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101625

Karen Ray
Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



SUBCHAPTER G. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT CLAIMS AGAINST HHSC DIVISION 1. GENERAL

1 TAC §§391.701, 391.703, 391.705

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101626

Karen Ray
Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



DIVISION 2. NEGOTIATION

1 TAC §§391.721, 391.723, 391.725, 391.727, 391.729, 391.731, 391.733, 391.735, 391.737

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101627

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



DIVISION 3. MEDIATION

1 TAC §§391.751, 391.753, 391.755, 391.757, 391.759, 391.761, 391.763, 391.765, 391.767, 391.769

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section, including construction projects and deferred maintenance projects for state hospitals and state supported living centers as defined by Health and Safety Code §531.002;

and state supported living centers as defined by Health and Safety Code §531.002;

Texas Government Code, §2252.202, which requires certain governmental entities to adopt rules to promote compliance with the requirement of this section that bid documents and projects in which iron or steel products will be used include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

Texas Government Code §2155.076, which requires state agencies to adopt rules relating to vendor protests of procurements;

Texas Government Code §2161.003, which requires state agencies to adopt by reference administrative rules of the Texas Comptroller of Public Accounts relating to Historically Underutilized Businesses;

Texas Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring; and

Texas Government Code §2260.052(c), which requires state agencies to adopt rules for negotiation and mediation of certain contract claims against the state.

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

Filed with the Office of the Secretary of State on April 22, 2021.

TRD-202101628

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 12, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 406-2500



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

The Comptroller of Public Accounts adopts the repeal of §5.36, concerning deductions for paying membership fees to certain law enforcement employee organizations, without changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8490). The rule will not be republished.

The Comptroller of Public Accounts adopts amendments to §5.46 concerning deductions for paying membership fees to employee organizations, with changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8490). The rule will be republished.

The repeal of §5.36 and the amendments to §5.46 take effect 60 calendar days after the date on which they are filed for adoption with the *Texas Register*.

In response to Attorney General Opinion No. KP-0310 (2020), the amendments to §5.46 require forms authorizing or canceling payroll deductions for state employee organization membership fees to be submitted directly to the employer by the state employee and not by the state employee organization, in subsection (b); in subsection (e), add consent language to the authorization form to ensure the employee's consent is voluntary; and, in subsection (i)(3), authorize a state agency, upon receipt of a timely submitted reconciling items report, to provide a state employee organization with personal contact information for each employee identified in the reconciling items report for whom the organization does not already have personal contact information.

The amendments also incorporate into §5.46 the provisions of §5.36 concerning deductions for paying membership fees to certain law enforcement employee organizations. Other than the types of employee organizations to which §5.36 and §5.46 apply, these two sections contain similar provisions.

Additionally, the amendments to §5.46 change the section title to "Deductions for Paying Membership Fees to Certain State Employee Organizations"; update the section's language to make it easier to read, remove unnecessary language, and correct citations; revise the "employer" and "fiscal year" definitions in subsection (a)(3) and (4) respectively; delete the "pay identification number" definition in subsection (a)(10); in subsection (a)(13), revise the "state agency" definition to better mirror the definitions in Government Code, §403.0165 and §659.101, and add the citation for the Position Classification Act; add a "Texas identification number" definition in new subsection (a)(15); require a state employee to submit a cancellation form or notice, as well as the authorization form, to the employer's human resource officer or payroll officer in subsections (b)(1)-(3), and (e)(1); provide that the comptroller and a state agency are not responsible for providing a state employee's membership information to a state employee organization in subsection (b)(1)(E); combine the requirements for authorization and cancellation forms or notices into subsection (b)(2); in subsection (b)(2)(D), require a state agency to inform the applicable eligible organization if a state employee member submits a cancellation form or notice; provide in subsections (c)(1)(E) and (d)(1)(E) that an eligible organization's receipt of the authorization form, cancellation form, or cancellation notice is not a prerequisite to the authorization or cancellation becoming effective; in subsection (e), require all authorization forms to contain the employee's consent for the employer to provide certain personal information to the organization only for the purpose of informing the employee organization about the payroll deduction, remove the size requirement for cancellation forms, and add submission instructions to authorization and cancellation forms; in subsection (f)(2)(E), require an organization to specify whether it requests certification under Government Code, §403.0165 or §659.1031; delete subsection (f)(2)(F) because the statute addresses the withholding of administrative fees; change "payee identification number" to "Internal Revenue Service employer identification number" in subsection (f)(2)(H); in new subsection (g)(2), add language from §5.36 regarding the certification of a state employee organization under Government Code, §659.1031; remove the requirement that notices and detail reports must be sent by mail in subsections (g)(3)(A), (i) and (l); in subsection (i), require the reconciling items report, personal contact information, and detail report to be submitted in a secure manner under new subsection (i)(3)(B), and subsections (i)(3)(D)(v) and (l)(3)(A); add subsection (i)(3)(E), which establishes a 10-day deadline for a

state agency to respond to a timely request for personal contact information for each employee identified in the reconciling items report for whom the state employee organization does not already have personal contact information; require the comptroller to transmit deducted membership fees to an eligible organization by electronic funds transfer, and delete language concerning payment made by warrants; change "head" to "chief administrator" in subsection (j); require an eligible organization to notify the comptroller if there is a change to the organization's electronic funds transfer information in new subsection (k)(2)(E); change "payee identification number" to "Texas identification number" in subsection (k)(4) to use current terminology; in subsection (l), combine subsection (l)(3)(C) and (D) because they contain the same requirements; and shorten the deadline for a state agency to submit a detail report to a state employee organization in subsection (l)(3)(C) from 20 days to 15 days.

When the amendments to §5.46 become effective, a state employee with an existing authorization for a payroll deduction under the current section will not be required to submit a new authorization form. However, a state employee who authorizes a payroll deduction under this section on or after the date these amendments become effective will be required to submit a properly completed authorization form in accordance with the requirements of the amended section.

The comptroller held a public hearing on March 18, 2021, regarding the repeal of §5.36 and the amendments to §5.46, pursuant to Government Code, §2001.029.

Comments were received from the AFSCME Correctional Employees Council/Texas Organizing Council (TOC), Texas American Federation of Teachers (Texas AFT), Texas Department of Public Safety Officers Association (Texas DPSOA), Texas Public Employees Association (TPEA), Texas State Employees Union (TSEU), and other commenters. TOC, Texas AFT, and TSEU oppose the amendments, but provide alternative language for the comptroller to consider if the comptroller chooses to proceed with the amendments. Texas DPSOA opposes the amendments, but offers to work with comptroller staff if the comptroller chooses to proceed with the amendments. TPEA provides comments for the comptroller's consideration and asks that the comptroller give the amendments careful consideration before adopting them to ensure they will work efficiently and expeditiously for all interested parties, but does not state whether it opposes or supports the amendments.

TOC, Texas AFT, TPEA and other commenters oppose the amendments because they are based on Attorney General Opinion No. KP-0310 (2020). They contend that the Attorney General Opinion misstates the law and completely misconstrues the United States Supreme Court decision in *Janus v. American Federation of State, County, and Municipal Employees*, 138 S.Ct. 2448 (2018); and the *Janus* opinion does not apply to the administration of voluntary payroll deductions in Texas because Texas is a "right to work" state in which union members voluntarily pay membership dues, may terminate the payment of dues at any time, and are not required to pay agency fees. TOC and other commenters add that the conclusions reached in the Attorney General Opinion are incorrect because multiple federal courts have concluded that the *Janus* opinion has no application to the voluntary deduction of dues predicated on a written authorization provided by a state employee organization; and the Attorney General Opinion is not binding on the comptroller because it is simply advisory. Other commenters assert that the Attorney General Opinion is very likely to draw legal challenges

from state employee organizations, causing the state to incur significant costs in unnecessary litigation.

The comptroller declines to revise the amendments in response to the comments described in the preceding paragraph. The amendments are adopted in response to Attorney General Opinion No. KP-0310 (2020), which requires that the process for collecting an employee's authorization for a payroll deduction for state employee organization dues or fees and the employee's consent to this payroll deduction is voluntary. According to the Opinion, the amendments comply with Government Code, §403.0165(c), which provides that an employee's authorization for a payroll deduction is voluntary. The amendments also comply with Government Code, §659.107, which contains language similar to §403.0165(c).

TOC, Texas DPSOA, TSEU, and other commenters oppose the amendments because any changes to the process should be made by the Texas legislature, which has failed to pass this type of legislation over multiple legislative sessions. Other commenters add that the failure to pass this type of legislation is due to bipartisan opposition to attacks on public sector rights to organize, making this rule change fundamentally undemocratic; and rule changes that attempt to supersede the will of the Texas legislature risk pushback from elected officials when there are more critical issues facing the state.

The comptroller declines to revise the amendments in response to the comments described in the preceding paragraph. The amendments do not require legislative action because they are proposed and adopted under the authority granted to the comptroller under Government Code, §403.0165(i) and §659.110, which authorize the comptroller to adopt rules to administer payroll deductions for certain state employee organizations.

TOC, TSEU, and other commenters oppose the amendments because the current system for deducting membership fees for state employee organizations has been in existence for 30 years and is working well for state employees and state employee organizations. They assert that no instances of fraud, coercion, or unethical practice have been reported and that the amendments do not solve a problem that currently exists.

The comptroller declines to revise the amendments in response to the comments described in the preceding paragraph. The amendments are adopted in response to Attorney General Opinion No. KP-0310 (2020), which requires that the process for collecting an employee's authorization for a payroll deduction for state employee organization dues or fees and the employee's consent to this payroll deduction is voluntary. According to the Opinion, the amendments comply with Government Code, §403.0165(c), which provides that an employee's authorization for a payroll deduction is voluntary. The amendments also comply with Government Code, §659.107, which contains language similar to §403.0165(c).

TOC, Texas AFT, TPEA, TSEU and other commenters oppose the amendments because they will upend the current process by requiring state employees to submit their authorization forms directly to their agencies' human resource officer or payroll officer, instead of requiring state employee organizations to submit the authorization forms to the agencies. They contend that state employee organizations' involvement in the process ensures that employees have fully and properly completed the forms; and the amendments impose an unnecessary burden on employees. TOC asserts that the Janus opinion indicates that the state may ensure that authorizations are collected in a manner that ensures

voluntariness by using means other than requiring the employee to submit the form directly to the employer; many more forms will be rejected for incompleteness under the new process, preventing employees from receiving benefits; and requiring correctional employees who work in a criminal justice setting to hold onto the form until they can submit it could allow the employees' personal information to fall into the wrong hands, endangering the employees and their families. TOC and TSEU contend that it may be difficult for employees to submit authorization forms directly to designated employer representatives because administrative employees are not always available or accessible to employees during their shifts. TSEU asserts that administrative employees may not be employed at the employees' local offices, or may be located far away from employees' local offices; the amendments will increase the workload on already overworked agency staff, increasing the cost to the state; the amendments make employees solely responsible for ensuring that authorization forms are properly submitted to the agencies; the amendments make it more difficult for employees to join a union; and the amendments increase the time and costs of processing dues deduction authorizations by senselessly eliminating the simple and effective system that has been in place for years. TSEU and other commenters assert that the amendments will unnecessarily complicate the process and destroy what is now a uniform, centralized system by establishing dozens of rules, procedures, and points of contact for membership in a state employee organization depending on state agency guidelines; and the amendments would force unions to follow up with multiple contacts monthly to determine new members. Texas AFT contends that there is no need to change the process because there are already multiple safeguards in place to ensure that the deductions are voluntary, such as the requirement that the organization use a form approved by the comptroller and that the employee sign the form. TPEA contends that software changes or additional staff time may be required for agencies to implement this new requirement. TSEU proposes that the comptroller make changes to §5.46(b)(1)(C)(ii) to permit authorization forms to continue to be submitted by state employee organizations to one central location; and make changes to §5.46(c)(1)(D) so that state employees and state employee organizations are responsible for the proper submission of authorization forms.

The comptroller declines to revise the amendments in response to the comments described in the preceding paragraph. The amendments are adopted in response to Attorney General Opinion No. KP-0310 (2020), which requires that the process for collecting an employee's authorization for a payroll deduction for state employee organization dues or fees and the employee's consent to this payroll deduction is voluntary. According to the Opinion, the amendments comply with Government Code, §403.0165(c), which provides that an employee's authorization for a payroll deduction is voluntary. The amendments also comply with Government Code, §659.107, which contains language similar to §403.0165(c). The amendments require the authorization form to be submitted to the employing state agency's human resource officer or payroll officer to address concerns expressed by state employee organizations that the form should not be submitted to the employee's supervisor because of the possibility that the supervisor may retaliate or discriminate against the employee for joining a state employee organization. Additionally, the comptroller's office has determined that the amendments would have no significant fiscal impact on state government.

TOC, Texas AFT, and other commenters request clarification as to the methods an employee may use to submit the authorization form. TOC and Texas AFT request that the final rule confirm that employees are not required to personally deliver a physical authorization form by hand, but may submit the form electronically, by mail or fax, or by placing it in a secure easily-accessed drop-box. TOC asks that the comptroller adopt a simple and less restrictive rule that would require that, if an authorization form is submitted by someone other than the employee, the employee's payroll deduction will commence following notice to the employee of the state's receipt of a facially valid authorization.

The comptroller declines to revise the amendments in response to the comments described in the preceding paragraph. The amendments give each state agency the flexibility to determine the means necessary to ensure that an authorization form is submitted directly from the employee to the agency's human resources officer or payroll officer and provides the security required to protect the sensitive personal information contained on the form. State agencies exchange sensitive information with employees on a regular basis and necessarily have appropriate processes available.

TOC points out that the Attorney General Opinion was incorrect when it concluded that employers may cancel their employee's authorization at some arbitrarily determined point in time. Another commenter expresses gratitude that the amendments do not attempt to burden employees' statutory rights by requiring employees to submit new authorization forms to their employer.

No changes were made to the amendments in response to the comments described in the preceding paragraph. The duration of an employee's authorization is not addressed in the amendments because the legislature addressed this issue in Government Code, §403.0165(a) and §659.106, by stating that the authorization remains in effect until an employee changes or revokes the authorization.

TOC, TSEU, and other commenters oppose the amendments because they will create opportunities for employer representatives to interfere with employees' exercise of their rights. TSEU and other commenters assert that the amendments to §5.46(b)(1)(C)(ii) will invite anti-union campaigns against state employees and will lead to litigation.

The comptroller declines to revise the amendments in response to the comments described in the preceding paragraph. Current rules require state employee organizations to submit authorization forms to the employing state agencies, but do not specify which officers at the agencies may receive the forms. The amendments continue to require authorization forms to be submitted to the employing state agencies, but require the forms to be submitted directly to the employing agency's human resource officer or payroll officer in order to address concerns expressed by state employee organizations that the forms should not be submitted to the employee's supervisor because of the possibility that the supervisor may retaliate or discriminate against the employee for joining a state employee organization.

TOC, Texas AFT, TSEU, and other commenters oppose the amendments because of the consent language in §5.46(e)(1)(C)(iii). TOC and TSEU contend that the Janus opinion states nothing about consent language, but makes clear that deductions are to be processed only upon the employee's consent. TSEU and other commenters contend that the consent language is unnecessary, paternalistic, intimidating and confusing because Texas is a "right to work" state and the fact

that the employee signed the form is sufficient to show that the employee voluntarily chose to do so; public employees have the legal right to join a union; and adding unnecessary and intimidating language to the membership application appears to serve no purpose other than to confuse and dissuade state employees from exercising their right to join a union. TOC contends that the Attorney General Opinion incorrectly found that an authorization form must include a warning regarding the purported "waiver" of the right not to associate; execution of the dues authorization is voluntary; the consent language is predicated on a misstatement of the law; to make the consent language less one-sided, it should include language confirming that the authorization form may include language regarding the employees' freedom to associate and the protections that exist under state law for employees who choose to exercise their right to associate; and the state's current practices and existing authorizations satisfy the voluntariness requirement because deductions only commence when an employee executes a request for the state to do so. Texas DPSOA asserts that its authorization forms currently ensure that employees give clear and compelling evidence of their consent to be members because the form indicates that it is strictly voluntary and can be canceled by the employee at any time. Texas AFT asserts that the consent language is incomplete because it should inform employees about their legal rights. TOC proposes that the comptroller change the consent language to clarify that the comptroller will approve authorization forms that contain truthful statements regarding the full extent of an employee's rights to join a state employee organization, whether the language precedes or follows the language required by the amendments. TSEU proposes that the comptroller change the consent language to state that employees acknowledge that their decision to sign the authorization form is voluntary and that they have not been coerced. Texas AFT proposes that the comptroller change the consent language to clarify that an employee is free to join a state employee organization and that there can be no reprisals against the employee for choosing to do so.

In response to the comments described in the preceding paragraph, the comptroller changes the consent language in §5.46(e)(1)(C)(iii) to clarify that, while an employee is free to join a state employee organization, the employee understands that the employee may change or cancel the authorization at any time by providing written notice to the employer. The comptroller also deletes the word "Additionally" from this provision.

TOC, TSEU, and other commenters oppose the amendments because the Attorney General Opinion and the amendments are an attempt to suppress union membership and block a union's ability to collect dues from its membership. TOC contends that the amendments affect the right of state employees to financially support their chosen state employee organizations, while TSEU contends that they constitute an attack on employees' rights to organize, peacefully assemble, petition the government, and join the union of their choice.

The comptroller declines to revise the amendments in response to the comments described in the preceding paragraph. The amendments address deductions for paying membership fees to certain state employee organizations and do not address employees' rights to organize, join a union, peacefully assemble, or pay membership dues. The amendments are adopted in response to Attorney General Opinion No. KP-0310 (2020), which requires that the process for collecting an employee's authorization for a payroll deduction for state employee organization dues or fees and the employee's consent to this payroll deduc-

tion is voluntary. According to the Opinion, the amendments comply with Government Code, §403.0165(c), which provides that an employee's authorization for a payroll deduction is voluntary. The amendments also comply with Government Code, §659.107, which contains language similar to §403.0165(c).

TOC, TSEU, and other commenters oppose the amendments because they do not adequately consider the state employee organizations' need to obtain timely information about their members. TOC proposes that the amendments require the transmission of membership information on an up-to-date monthly basis including all current employees on dues deduction; any new or added deductions processed in the preceding month; all canceled deductions including the reason for the cancellation; and any attempted authorizations that were not processed or were rejected as incomplete. TSEU proposes that the comptroller establish guidelines that would require state agencies to share data with organizations within hours of receiving a membership application, and impose fines on agencies that do not comply.

In response to the comments described in the preceding paragraph, the comptroller adds §5.46(i)(3)(E), which establishes a 10-day deadline for a state agency to respond to a timely request for personal contact information for each employee identified in the reconciling items report for whom the state employee organization does not already have personal contact information, and shortens the deadline for a state agency to submit a detail report to a state employee organization in §5.46(l)(3)(C) from 20 days to 15 days.

TOC and other commenters ask the comptroller to ensure that the cancellation form informs employees of the loss of membership benefits because state employee organizations will no longer be involved in that process and will not be able to notify employees of their loss of membership benefits.

The comptroller declines to revise the amendments in response to the comments described in the preceding paragraph. The language in §5.46(e)(1)(D) is sufficient to inform the employee about the cancellation process.

TOC and other commenters propose that the comptroller include in the authorization form an authorization to adjust deductions in keeping with any changes in the organizations monthly fee amount and delete any language that provides the employing state agency with discretion to require an employee to execute a new authorization form before deducting increased dues. They assert that, if the employee and employee organization have satisfied the mandatory criteria for making adjustments in deductions to keep pace with changes in fees amounts, there is no reason to permit discretion on the part of the employer, so any language that grants discretion to the employer should be removed.

The comptroller declines to revise the amendments in response to the comment described in the preceding paragraph. The amendments maintain the current process. Both the current language and the amendments to §5.46(b)(3) provide the employing state agency with the discretion to either automatically change the amount of the deduction under the authorization form the employee has already executed or require the employee to submit a new authorization form.

TOC proposes changing "may" to "shall" in §5.46(g) to make the comptroller's certification of a state employee organization to receive payroll deductions mandatory, instead of discretionary, as long as the organization meets the requirements for certification, because the statutes make it mandatory.

In response to the comment described in the preceding paragraph, the comptroller changes "may" to "shall" in §5.46(g), (g)(1)(A), and (g)(2) to make the comptroller's certification of a state employee organization to receive payroll deductions mandatory, instead of discretionary, as long as the organization meets the requirements for certification.

One commenter asserts that every employee of the state should pay dues to support their representation because every state employee is represented by TSEU, otherwise they are getting this representation for free at other's expense.

No changes were made to the amendments in response to the comment described in the preceding paragraph. This comment is outside the scope of the current rule proposal.

SUBCHAPTER D. CLAIMS PROCESSING-- PAYROLL

34 TAC §5.36

The repeal is adopted under Government Code, §403.0165, which authorizes the comptroller to adopt rules to administer payroll deductions for certain state employee organizations, and Government Code, §659.110, which authorizes the comptroller to adopt rules to administer the eligible state employee organization membership fee deduction program authorized by Government Code, Chapter 659, Subchapter G, concerning supplemental deductions.

The repeal implements Government Code, §§403.0165, 659.101, and 659.1031-659.110.

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 April 21, 2021.

TRD-202101583

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: June 20, 2021

Proposal publication date: November 20, 2021

For further information, please call: (512) 475-2220



34 TAC §5.46

The amendments are adopted under Government Code, §403.0165, which authorizes the comptroller to adopt rules to administer payroll deductions for certain state employee organizations, and Government Code, §659.110, which authorizes the comptroller to adopt rules to administer the eligible state employee organization membership fee deduction program authorized by Government Code, Chapter 659, Subchapter G, concerning supplemental deductions.

The amendments implement Government Code, §§403.0165, 659.101, and 659.1031-659.110.

§5.46. Deductions for Paying Membership Fees to Certain State Employee Organizations.

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

(1) Comptroller--The Comptroller of Public Accounts for the State of Texas.

(2) Eligible organization--A state employee organization that the comptroller has certified in accordance with this section and whose certification has not been terminated.

(3) Employer--A state agency that employs a state employee who authorizes a deduction under this section.

(4) Fiscal year--The accounting period for the state government which begins on September 1 and ends on August 31.

(5) Holiday--A state or national holiday as specified by Government Code, §§662.001-662.010. The term does not include a holiday that the General Appropriations Act prohibits state agencies from observing.

(6) Include--Is a term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(7) Institution of higher education--Has the meaning assigned by Education Code, §61.003.

(8) May not--Is a prohibition. The term does not mean "might not" or its equivalents.

(9) Membership fee--The dues or fee that a state employee organization requires a state employee to pay to maintain membership in the organization.

(10) Salary or wage leveling agreement--A contract or other agreement between a state employee and the employer that requires the employer to pay the employee's total annual salary or wages over 12 months even though the employee is not scheduled to work each of those months.

(11) Salary or wages--Base salary or wages, longevity pay, or hazardous duty pay.

(12) State agency--A department, commission, board, office, agency, or other entity of Texas state government, including an institution of higher education.

(13) State employee--An employee of a state agency. The term includes an elected or appointed official, a part-time employee, an hourly employee, a temporary employee, an employee who is not covered by Government Code, Chapter 654 (the Position Classification Act), and a combination of the preceding. The term excludes an independent contractor and an employee of an independent contractor.

(14) State employee organization--An association, union, or other organization that advocates the interests of state employees concerning grievances, compensation, hours of work, or other conditions or benefits of employment.

(15) Texas identification number--The 14-digit number that the comptroller assigns to each direct recipient of a payment made by the comptroller.

(16) Workday--A calendar day other than Saturday, Sunday, or a holiday.

(b) Deductions.

(1) Authorization of deductions.

(A) A state employee may authorize one or more monthly deductions from the employee's salary or wages to pay membership fees to eligible organizations.

(B) Neither a state agency nor a state employee organization may state or imply that a state employee is required to authorize a deduction under this section.

(C) A state employee may provide an authorization only if the employee:

(i) properly completes an authorization form; and

(ii) submits the form to the employer's human resource officer or payroll officer.

(D) Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee's authorization of an incorrect amount of a deduction under this section.

(E) Except as provided in subsection (i)(3) of this section, neither the comptroller nor a state agency is responsible for providing a state employee's membership information to an eligible organization.

(2) Change in the amount of a deduction or cancellation of a deduction.

(A) At any time, a state employee may authorize a change in the amount to be deducted under this section from the employee's salary or wages or cancel a deduction under this section.

(B) A state employee may authorize a change in the amount of a deduction or a cancellation of a deduction under this section only if the employee:

(i) properly completes an authorization form, cancellation form, or cancellation notice, as appropriate; and

(ii) submits the form or notice to the employer's human resource officer or payroll officer.

(C) Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee's change of the amount of a deduction or cancellation of a deduction under this section.

(D) If a state employee submits a cancellation form or cancellation notice to the employer's human resource officer or payroll officer, the state agency must notify the affected eligible organization.

(3) Automatic change in the amount of a deduction.

(A) An employer may change the amount of a deduction under this section from the employee's salary or wages without requiring the employee to submit a new authorization form only if:

(i) the employee's current authorization form authorizes the employer to change the amount of a deduction under this section from the employee's salary or wages without requiring the employee to submit a new authorization form; and

(ii) the change is needed because the eligible organization to which the employee authorized a deduction has changed the amount of membership fees it charges to state employees.

(B) Even if a state employee provides the authorization under subparagraph (A) of this paragraph, the employer may require the employee to submit a properly completed authorization form to the employer before the employer changes the amount of a deduction under this section from the employee's salary or wages.

(C) A state employee may provide the authorization under subparagraph (A) of this paragraph only if the employee:

(i) properly completes an authorization form that enables state employees to provide the authorization; and

(ii) submits the form to the employer's human resource officer or payroll officer.

(D) When an eligible organization wants to change the amount of membership fees it charges to state employees that are authorized under subparagraph (A) of this paragraph, the organization must provide prior written notification of the change to the comptroller. If the comptroller receives the notification on the first calendar day of a month, the change is effective for the salary or wages paid to state employees on the first workday of the second month following the month in which the comptroller receives the notification. If the comptroller receives the notification after the first calendar day of a month, the change is effective for the wages and salaries paid to state employees on the first workday of the third month following the month in which the comptroller received the notification.

(4) Sufficiency of salary or wages to support a deduction.

(A) A state employee is solely responsible for ensuring that the employee's salary or wages are sufficient to support a deduction authorized by this section.

(B) If a state employee's salary or wages are sufficient to support only part of a deduction authorized by this section, no part of the deduction may be made.

(C) The amount that could not be deducted from a state employee's salary or wages because they were insufficient to support the deduction may not be made up by deducting the amount from subsequent payments of salary or wages to the employee.

(5) Timing of deductions.

(A) Except as provided in subparagraph (B) of this paragraph, a deduction authorized by this section must be made from the salary or wages that are paid on the first working day of a month.

(B) If a state employee does not receive a payment of salary or wages on the first working day of a month, the employer may designate the payment of salary or wages to the employee from which a deduction authorized by this section will be made. A deduction authorized by this section may be made only once each month.

(6) Regularity of deductions.

(A) This subparagraph applies to a state employee who is scheduled by the employer to work each month of a year. A deduction authorized by this section must be calculated so that the total membership fee paid by a state employee per year is spread evenly over 12 monthly deductions.

(B) This subparagraph applies to a state employee who is not scheduled by the employer to work each month of a year.

(i) If a state employee has entered into a salary or wage leveling agreement, a deduction authorized by this section must be calculated so that the total membership fee paid by the employee per year is spread evenly over the months the employee will be paid under the agreement.

(ii) If a state employee has not entered into a salary or wage leveling agreement, a deduction authorized by this section must be calculated so that the total membership fee paid by the employee per year is spread evenly over the months the employee will be paid.

(7) Retroactive deductions.

(A) In this paragraph, "retroactive deduction" means a deduction authorized by this section to the extent the purpose of the deduction is:

(i) to correct an error made in a previous month that resulted in the amount of money deducted being less than the amount authorized by a state employee; or

(ii) to catch up on the amount of membership fees owed by a state employee to an eligible organization because a deduction authorized by this section was not made in one or more previous months.

(B) A retroactive deduction is prohibited unless:

(i) an error described in subparagraph (A)(i) of this paragraph was committed by the employer; and

(ii) the eligible organization that received the erroneous deduction consents to the retroactive deduction.

(8) Interagency transfers of state employees. A state employee who transfers from one state agency to a second state agency must be treated by the second state agency as if the employee has not yet authorized any deductions under this section.

(c) Effectiveness of authorization forms.

(1) Effective date of authorization forms.

(A) This subparagraph applies if a state agency receives a state employee's properly completed authorization form on the first calendar day of a month.

(i) The first deduction authorized by this section must be made from the employee's salary or wages that are paid on the first workday of the first month following the month in which the agency receives the form.

(ii) If an authorization form is submitted to change the amount of a deduction authorized by this section, the change is effective with the deduction made on the first workday of the first month following the month in which the agency receives the form.

(B) This subparagraph applies if a state agency receives a state employee's properly completed authorization form after the first calendar day of a month.

(i) The first deduction authorized by this section must be made from the employee's salary or wages that are paid on the first workday of the second month following the month in which the agency receives the form. However, the agency may consent for the first deduction to occur from the salary or wages that are paid on the first workday of the first month following the month in which the agency receives the form.

(ii) If an authorization form is submitted to change the amount of a deduction authorized by this section, the change is effective with the deduction made on the first workday of the second month following the month in which the agency receives the form. However, the agency may consent for the change to be effective with the deduction made on the first workday of the first month following the month in which the agency receives the form.

(C) If the first calendar day of a month is not a workday, the first workday following the first calendar day is the deadline for the receipt of properly completed authorization forms.

(D) A state employee is solely responsible for ensuring that a properly completed authorization form is received by the employer by the deadline.

(E) An eligible organization's receipt of the authorization form is not a prerequisite to the authorization becoming effective.

(2) Return of authorization forms.

(A) A state agency shall return an authorization form to the state employee who submitted the form if:

(i) the form is incomplete, contains erroneous data, or is otherwise insufficient; and

(ii) a deficiency listed in clause (i) of this subparagraph makes it impossible for the agency to establish the deduction in accordance with the form.

(B) A state agency may either accept an authorization form from or return an authorization form to the state employee who submitted the form when the form postpones the first deduction authorized by this section beyond the effective date determined under paragraph (1) of this subsection. If the agency accepts the authorization form, the agency may not make the deduction effective before the effective date specified on the form.

(C) A state agency shall state in writing the reason for the return of an authorization form. The statement must be attached to the form being returned.

(d) Effectiveness of cancellation forms and cancellation notices.

(1) Effective date of cancellation forms and cancellation notices.

(A) This subparagraph applies if a state agency receives a state employee's properly completed cancellation form or cancellation notice on the first calendar day of a month. A state employee's cancellation of a deduction authorized by this section is effective for the salary or wages paid to the employee on the first workday of the first month following the month in which the agency receives the cancellation form or cancellation notice.

(B) This subparagraph applies if a state agency receives a state employee's properly completed cancellation form or cancellation notice after the first calendar day of a month. A state employee's cancellation of a deduction authorized by this section is effective for the salary or wages paid to the employee on the first workday of the:

(i) second month following the month in which the agency receives the cancellation form or cancellation notice; or

(ii) first month following the month in which the agency receives the cancellation form or cancellation notice if the agency consents to this effective date.

(C) If the first calendar day of a month is not a workday, the first workday following the first calendar day is the deadline for the receipt of properly completed cancellation forms or cancellation notices.

(D) A state employee is solely responsible for ensuring that properly completed cancellation forms and cancellation notices are received by the deadline.

(E) An eligible organization's receipt of the cancellation form or cancellation notice is not a prerequisite to the cancellation becoming effective.

(2) Return of cancellation forms and cancellation notices.

(A) A state agency shall return a cancellation form or cancellation notice to the state employee who submitted the form or notice if:

(i) the form or notice is incomplete, contains erroneous data, or is otherwise insufficient; and

(ii) a deficiency listed in clause (i) of this subparagraph makes it impossible for the agency to cancel the deduction in accordance with the form or notice.

(B) A state agency shall state in writing the reason for the return of a cancellation form or cancellation notice. The statement must be attached to the form being returned.

(c) Authorization and cancellation forms.

(1) The comptroller's approval of authorization and cancellation forms.

(A) An eligible organization may not distribute or provide an authorization or cancellation form to a state employee until the organization has received the comptroller's written approval of the form.

(B) As a condition for retaining its eligibility, an eligible organization must produce an authorization form and a cancellation form that comply with the comptroller's requirements and this section. The organization must produce the forms within a reasonable time after the organization receives its certification from the comptroller.

(C) The comptroller may approve an eligible organization's authorization form if the form:

(i) clearly informs state employees that a properly completed authorization form must be submitted to the employer's human resource officer or payroll officer to authorize a deduction;

(ii) clearly informs state employees that a copy of the properly completed authorization form should be provided to the organization to notify the organization that the employee has authorized a deduction;

(iii) contains the following statement: "I understand that I cannot be compelled to be a member of a state employee organization or to pay dues to a state employee organization as a condition of employment with the state. While I am free to join a state employee organization, I understand that I may change or cancel this authorization at any time by providing written notice to my employer. I voluntarily authorize a monthly payroll deduction in the amount shown above from my salary or wages for membership fees to the state employee organization listed above and agree to comply with the comptroller's rules concerning this deduction. I agree that my name, social security number, personal contact information, and the amount of my payroll deduction for membership fees may be provided to the state employee organization listed above only for the purpose of informing the state employee organization about the payroll deduction."; and

(iv) complies with this section and the comptroller's other requirements for format and substance.

(D) The comptroller may approve the cancellation form of an eligible organization if the form:

(i) clearly informs state employees that a properly completed cancellation form must be submitted to the employer's human resource officer or payroll officer to cancel the deduction;

(ii) clearly informs state employees that a copy of the properly completed cancellation form should be provided to the organization to notify the organization that the employee has cancelled the deduction;

(iii) clearly informs state employees that they are not required to state a reason for a cancellation; and

(iv) complies with the comptroller's other requirements for format and substance.

(E) An eligible organization must revise an authorization or cancellation form upon request from the comptroller. The organization may not distribute or otherwise make available to state employees a revised form until the organization has received the comptroller's written approval of the form.

(2) Distribution of authorization or cancellation forms.

(A) An eligible organization must provide an authorization or cancellation form to a state employee or state agency promptly after receiving:

(i) an oral or written request for the form from the employee or agency; or

(ii) an oral or written request to provide the form to the employee from the comptroller or the employer.

(B) A state agency may maintain a supply of cancellation forms and distribute the forms to its state employees upon request. An eligible organization shall promptly provide the forms to the agency upon request.

(f) Procedural requirements for certifying state employee organizations.

(1) Request for certification.

(A) The comptroller may not certify a state employee organization under this section unless the comptroller receives a written request for certification from an individual who is authorized by the organization to make the request.

(B) The comptroller may not certify a state employee organization under this section if the comptroller receives the organization's request for certification after June 2nd of a fiscal year.

(2) Requirements for requests for certification. A request for certification submitted to the comptroller by a state employee organization must contain:

(A) the organization's complete name;

(B) the street address of the headquarters of the organization;

(C) the mailing address of the headquarters of the organization, if different from the street address;

(D) the full name, title, telephone number, and mailing address of the organization's primary contact;

(E) a specific request for certification as an eligible organization, specifying whether the organization is requesting certification under Government Code, §403.0165 or §659.1031;

(F) a specific acceptance of the requirements of this section as they exist at the time the request is made or as adopted or amended thereafter;

(G) the organization's Internal Revenue Service employer identification number; and

(H) any other information that the comptroller deems necessary.

(g) Substantive requirements for certifying state employee organizations. The comptroller shall certify a state employee organization under this section if the organization satisfies the requirements of paragraph (1) or (2) of this subsection.

(1) Certification of a state employee organization under Government Code, §403.0165.

(A) The comptroller shall certify a state employee organization if the organization:

(i) submits persuasive evidence to the comptroller that the organization had a membership of at least 4,000 state employees throughout the 18 months preceding the month in which the comptroller receives the organization's request for certification (an example of the evidence that the comptroller may review is a membership roster containing the name of each state employee who is a member of the organization, the date each employee joined the organization, and the date through which each employee's membership fees are paid);

(ii) demonstrates to the comptroller that the organization conducts activities on a statewide basis (an organization may satisfy this requirement by submitting any relevant evidence, including newsletters, news articles, correspondence, and membership rosters containing the names and addresses of the organization's members);

(iii) demonstrates to the comptroller that the organization had a membership fee structure for state employees throughout the 18 months preceding the month in which the comptroller receives the organization's request for certification (an organization may satisfy this requirement by submitting relevant evidence, including dated enrollment forms from state employees, documentation about the fees structure, and financial records);

(iv) demonstrates to the comptroller that the membership fees collected from state employees will be equal to an average of at least one-half of the membership fees received by the organization nationwide (an organization may satisfy this requirement by submitting financial records that compare the membership fees to be received from state employees with the membership fees received from other individuals throughout the nation); and

(v) has submitted to the comptroller a completed direct deposit form for the organization.

(B) The comptroller shall certify a state employee organization under this paragraph that demonstrates to the satisfaction of the comptroller that the organization had a membership of at least 4,000 state employees on April 1, 1991. The organization is not required to satisfy any of the other substantive requirements of this paragraph except for subparagraph (A)(v) of this paragraph. A state employee organization may demonstrate that the organization had a membership of at least 4,000 state employees on April 1, 1991, only by submitting to the comptroller:

(i) a membership roster containing the name of each state employee who was a member of the organization on April 1, 1991;

(ii) the date each employee joined the organization; and

(iii) the date through which each employee's membership fees were paid as of April 1, 1991.

(2) Certification of a state employee organization under Government Code, §659.1031. The comptroller shall certify a state employee organization if the organization:

(A) submits persuasive evidence to the comptroller that the organization had a membership of at least 2,000 active or retired state employees who hold or have held certification from the Texas Commission on Law Enforcement under Occupations Code, Chapter 1701, Subchapter G; and

(B) has submitted a completed direct deposit form for the organization to the comptroller.

(3) Notifications.

(A) The comptroller shall notify a state employee organization about the comptroller's approval or disapproval of the organization's request for certification by no later than the 30th day after the comptroller receives the request if the request is complete in all respects.

(B) The comptroller shall notify each state agency of the comptroller's certification of a state employee organization by no later than the 30th day after the comptroller makes the certification.

(h) Effective date of certification. The first deduction to pay a membership fee to an eligible organization may be made from salary or wages paid on the first workday of the second month following the month in which the comptroller certifies the organization.

(i) Payments of deducted membership fees.

(1) Payments by the comptroller through electronic funds transfers. The comptroller shall pay deducted membership fees to an eligible organization by electronic funds transfer.

(2) Payments by institutions of higher education.

(A) This paragraph applies only to membership fees in eligible organizations that have been deducted from salaries or wages that the comptroller does not pay directly to state employees of institutions of higher education.

(B) An institution of higher education shall pay deducted membership fees to an eligible organization by electronic funds transfer unless it is infeasible to do so.

(C) If it is infeasible for an institution of higher education to pay deducted membership fees to an eligible organization by electronic funds transfer, then the institution shall pay the fees by check. The check must be mailed or delivered to the organization by no later than the 20th calendar day of the month following the month when the salary or wages from which the deductions were made were earned. If the 20th calendar day of a month is not a workday, then the first workday following the 20th calendar day is the deadline for the mailing or delivery of checks.

(3) Reconciliation.

(A) An eligible organization shall reconcile the detail report provided by a state agency under subsection (1)(3) of this section with:

(i) the amount of membership fees paid to the organization under this subsection; and

(ii) the organization's membership information.

(B) An eligible organization must submit to the agency, in a secure manner, a reconciling items report, which identifies:

(i) any discrepancies between the detail report provided by a state agency under subsection (1)(3) of this section and the actual amount of membership fees received under this subsection; and

(ii) the name of any employee listed in the detail report provided by a state agency under subsection (1)(3) of this section for whom the organization does not already have personal contact information.

(C) The organization must ensure that the agency receives the organization's reconciling items report by no later than the 60th calendar day after the day on which the agency submitted the detail report to the organization. If the 60th calendar day is not a workday, the first workday following the 60th calendar day is the deadline.

(D) A state agency that receives a reconciling items report from an eligible organization shall investigate the reconciling

items described in the organization's reconciling items report, and notify the organization of the action to be taken to eliminate the reconciling items. A reconciling item may be eliminated by:

(i) making a retroactive deduction if it is authorized by subsection (b)(7) of this section;

(ii) recovering an excessive payment to an eligible organization of amounts deducted under this section from a subsequent payment to the organization;

(iii) recovering an excessive payment to an eligible organization of amounts deducted under this section by obtaining a refund from the organization in accordance with subsection (k)(7) of this section;

(iv) the agency making corrections to the detail report if the report is incorrect; or

(v) providing the organization, in a secure manner, with personal contact information for each employee identified in the reconciling items report for whom the organization does not already have personal contact information.

(E) If a state agency timely receives a reconciling items report that identifies the information described in paragraph (3)(B)(ii) of this subsection, the agency shall provide the information described in paragraph (3)(D)(v) of this subsection to the organization no later than the 10th calendar day after the day on which the agency received the organization's reconciling items report. If the 10th calendar day is not a workday, the first workday following the 10th calendar day is the deadline for providing the information.

(4) Subordinate units of eligible organizations.

(A) A chapter or other subordinate unit of an eligible organization may receive directly from the comptroller or an institution of higher education a payment of deducted membership fees if the fees were deducted under authorization forms that authorized the payment of the fees to the chapter or other subordinate unit of the organization.

(B) A request to pay deducted membership fees to a chapter or subordinate unit instead of the parent eligible organization must be submitted to the comptroller by the organization.

(C) The comptroller may grant a request under subparagraph (B) of this paragraph only if the membership fee structure of the chapter or subordinate unit is the same as the membership fee structure of the parent eligible organization.

(D) The comptroller's granting of a request under subparagraph (B) of this paragraph is not a certification of the chapter or subordinate unit as an eligible organization.

(E) The comptroller may require an eligible organization to submit proof that an entity is a chapter or other subordinate unit of the organization before a payment of deducted membership fees is paid directly to the entity. The comptroller may periodically require the organization to submit proof that the entity is still a chapter or other subordinate unit of the organization as a condition for continuing to pay deducted membership fees directly to the entity.

(j) Solicitation. This section does not prohibit the chief administrator of a state agency from permitting or prohibiting solicitation by eligible organizations on the premises of the agency.

(k) Responsibilities of eligible organizations.

(1) Disseminating information.

(A) An eligible organization is solely responsible for the dissemination of relevant information to its representatives and employees.

(B) An eligible organization must ensure that its representatives and employees comply with the requirements of this section.

(2) Notification to the comptroller. An eligible organization must notify the comptroller in writing immediately after a change occurs to:

(A) the organization's name;

(B) the street address of the headquarters of the organization;

(C) the mailing address of the headquarters of the organization, if different from the street address;

(D) the full name, title, telephone number, or mailing address of the organization's primary contact; or

(E) the organization's electronic funds transfer information.

(3) Primary contact. The individual that a state employee organization designates as its primary contact must represent the organization for the purposes of:

(A) communicating with the comptroller, including receiving and responding to correspondence from the comptroller; and

(B) disseminating information, including information about the requirements of this section, to representatives of the organization.

(4) Texas identification number. The Texas identification number of an eligible organization must appear on all correspondence from the organization to the comptroller or a state agency.

(5) Acceptance of authorization forms. A state agency must accept an authorization form from a state employee if a refusal to accept the form would violate a law of the United States or the State of Texas.

(6) Acceptance of cancellation forms and cancellation notices. A state agency must accept a cancellation form or cancellation notice from a state employee unless:

(A) the employee is not a member of the organization; or

(B) the employee did not properly complete the cancellation form.

(7) Refunding excessive payments of amounts deducted under this section.

(A) An eligible organization shall refund a payment of amounts deducted under this section to the extent the amount exceeds the amount that should have been paid to the organization if:

(i) the organization receives a written request for the refund from a state agency;

(ii) the agency provides reasonable evidence of the overpayment to the organization; and

(iii) no subsequent payments of amounts deducted under this section are anticipated to be made to the organization.

(B) If a refund is required by subparagraph (A) of this paragraph, the organization must ensure that the appropriate state agency receives the refund by no later than the 30th calendar day after the later of:

(i) the date on which the organization receives the agency's written request for the refund; and

(ii) the date on which the organization receives the agency's reasonable evidence of the overpayment.

(1) Responsibilities of state agencies.

(1) Reports of violations. A state agency may report to the comptroller a violation of this section that the agency believes an eligible organization or its representatives or employees might have committed. A report must be made in writing, and a copy of the report must be mailed to the organization at the same time that the original of the report is mailed to the comptroller.

(2) Authorization forms. A state agency:

(A) may accept authorization forms only if they comply with this section;

(B) must ensure that the identifying information for an eligible organization on an authorization form is the same as the identifying information on the notification document received from the comptroller under subsection (g)(3)(B) of this section; and

(C) may not accept an authorization form that contains an obvious alteration without the state employee's written consent to the alteration.

(3) Detail reports to eligible organizations.

(A) An employer must submit, in a secure manner, a detail report each month to each eligible organization that receives the deductions.

(B) A detail report to an eligible organization for a month must contain:

(i) the name, in alphabetical order, and social security number of each state employee from whose salary or wages a deduction was authorized by this section for the month, regardless of whether the deduction was actually made; and

(ii) the amount of the deduction made for each employee.

(C) An employer must submit the detail report for the payment to the organization by no later than the 15th calendar day of the month in which the payment was made. If the 15th calendar day is not a workday, then the first workday following the 15th calendar day is the deadline for submitting the report.

(m) Termination of certification.

(1) Termination by the comptroller.

(A) The comptroller may terminate the certification of an eligible organization only if the organization violates subsection (e)(1) of this section.

(B) The comptroller may determine the effective date of a termination under this paragraph. No deduction authorized by this section may be made to an eligible organization on or after the effective date of a termination under this paragraph.

(C) When the comptroller terminates the certification of an eligible organization, the comptroller shall send written notice of the termination to the organization via certified mail, return receipt requested.

(2) Termination by eligible organizations.

(A) An eligible organization may terminate its participation in the deduction program authorized by this section only by terminating its certification.

(B) An eligible organization may terminate its certification by providing written notice of termination to the comptroller. However, an organization may not provide written notice of termination to the comptroller until the organization has provided written notice of termination to each state employee from whose salary or wages a membership fee to the organization is being deducted.

(C) An eligible organization's termination of its certification is effective beginning with the salary or wages that are paid on the first workday of the third month following the month in which the comptroller receives the organization's proper notice of termination.

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 April 21, 2021.

TRD-202101584

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: June 20, 2021

Proposal publication date: November 20, 2021

For further information, please call: (512) 475-2220





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.

Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Agricultural Finance Authority (TAFE), a public authority within the Texas Department of Agriculture, adopts the review of Texas Administrative Code, Title 4, Part 1, Chapter 28, comprised of §§28.1 - 28.63. The review was conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

Notice of intent to review the rules was published in the January 29, 2021 issue of the *Texas Register* (46 TexReg 845). No comments were received on the proposed rule review.

TAFE finds that the reasons for initially adopting the rules in Chapter 28 continue to exist, and readopts the rules with nonsubstantive changes to reflect current procedures and update references to legal authority. As a result, TAFE proposes amendments to the rules, which can be found in the Proposed Rules section of this issue.

TRD-202101654

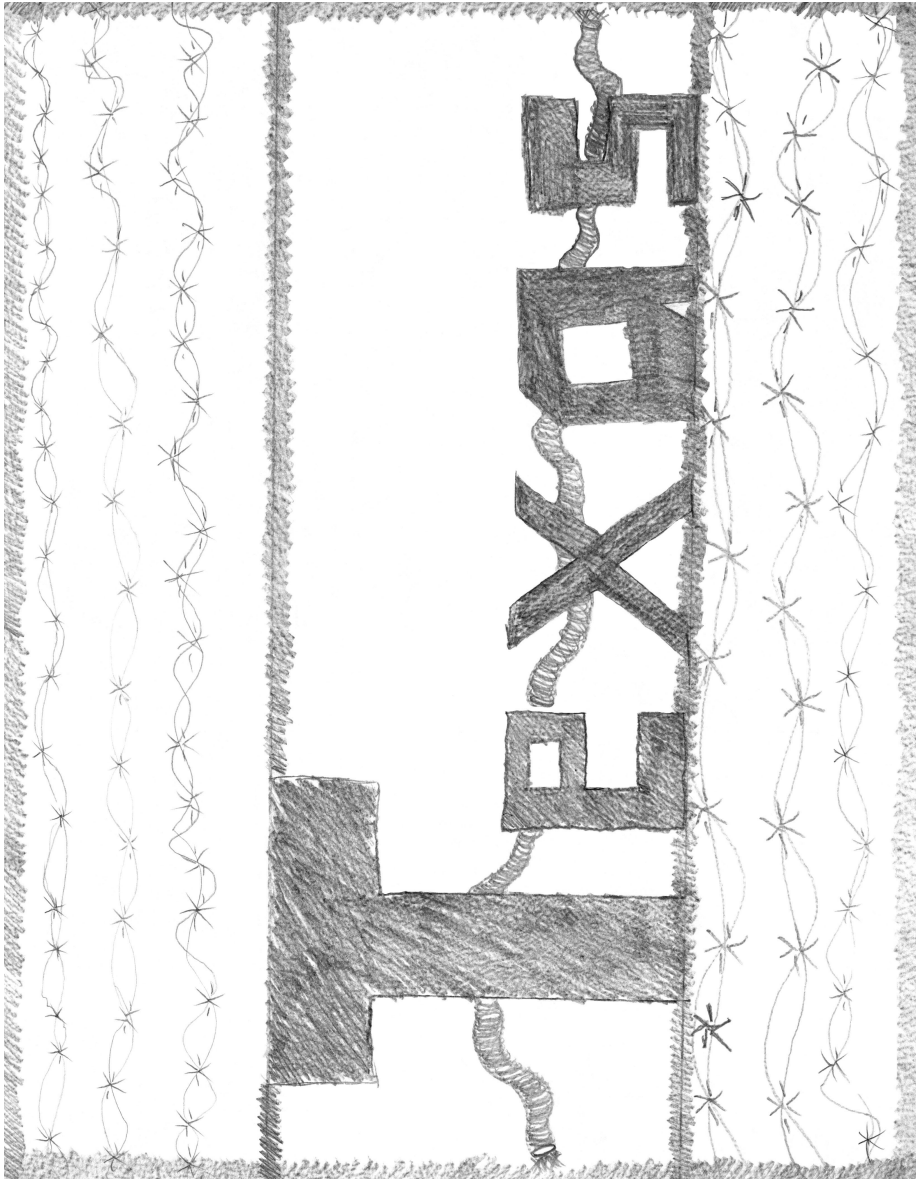
Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Filed: April 26, 2021





IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

State Bar of Texas

Committee on Disciplinary Rules and Referenda Proposed
Rule Changes: Proposed Rule 1.00 (Terminology), Texas
Disciplinary Rules of Professional Conduct

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct

Rule 1.00. Terminology

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rule. The Committee will accept comments concerning the proposed rule through July 13, 2021. Comments can be submitted at texasbar.com/cdrr or by email to cdrr@texasbar.com. The Committee will hold a public hearing on the proposed rule by teleconference at 10:30 a.m. CDT on June 10, 2021. For teleconference participation information, please go to texasbar.com/cdrr/participate.

Proposed Rule

Rule 1.00. Terminology

- (a) “Adjudicatory Official” denotes a person who serves on a Tribunal.
- (b) “Adjudicatory Proceeding” denotes the consideration of a matter by a Tribunal.
- (c) “Belief” or “Believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.
- (d) “Client.” A person is a client when:
- (1) the person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either
 - (i) the lawyer manifests to the person consent to do so; or
 - (ii) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services; or
 - (2) a tribunal with power to do so appoints the lawyer to provide the services.
- (e) “Competent” or “Competence” denotes possession or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.
- (f) “Consult” or “Consultation” denotes communication of information and advice reasonably

sufficient to permit the client to appreciate the significance of the matter in question.

(g) “Confirmed in writing.” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (k) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(h) “Firm” or “Law firm” denotes a lawyer or lawyers in a private firm; or a lawyer or lawyers employed in the legal department of a corporation, legal services organization, or other organization, or in a unit of government.

(i) “Fitness” denotes those qualities of physical, mental and psychological health that enable a person to discharge a lawyer’s responsibilities to clients in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of fitness is indicated most clearly by a persistent inability to discharge, or unreliability in carrying out, significant obligations.

(j) “Fraud” or “Fraudulent” denotes conduct having a purpose to deceive and not merely negligent misrepresentation or negligent failure to apprise another of relevant information.

(k) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about material risks of and reasonably available alternatives to the proposed course of conduct. If a rule calling for informed consent requires specific disclosures (see, e.g., Rule 1.06(c)(2)), consent is not informed unless those disclosures have been made.

(l) “Knowingly,” “Known,” or “Knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

(m) “Law firm”: see “Firm.”

(n) “Partner” denotes an individual or corporate member of a partnership or a shareholder in a law firm organized as a professional corporation.

(o) “Person” includes a legal entity as well as an individual.

(p) “Reasonable” or “Reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(q) “Reasonable belief” or “Reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(r) “Represent,” “Represents,” or “Representation.” A lawyer represents a person if the person is a client of the lawyer. See “Client.” If the relationship of client and lawyer terminates, the lawyer’s

representation of the client terminates.

(s) “Should know” when used in reference to a lawyer denotes that a reasonable lawyer under the same or similar circumstances would know the matter in question.

(t) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(u) “Substantial” when used in reference to degree or extent denotes a matter of meaningful significance or involvement.

(v) “Tribunal” denotes any governmental body or official or any other person engaged in a process of resolving a particular dispute or controversy. “Tribunal” includes such institutions as courts and administrative agencies when engaging in adjudicatory or licensing activities as defined by applicable law or rules of practice or procedure, as well as judges, magistrates, special masters, referees, arbitrators, mediators, hearing officers and comparable persons empowered to resolve or to recommend a resolution of a particular matter; but it does not include jurors, prospective jurors, legislative bodies or their committees, members or staffs, nor does it include other governmental bodies when acting in a legislative or rule-making capacity.

(w) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and electronic communications. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment:

Client

1. An attorney-client relationship is created only three ways: by judicial appointment, by express agreement, or by mistake. Two of the three ways of establishing a lawyer-client relationship—court appointment and express agreement—are relatively formal and easy to recognize. For an attorney-client relationship to arise by mistake, three things are necessary. First, the person must manifest an intent that the lawyer provide legal services. Second, the lawyer must fail to manifest lack of consent to do so. Third, the lawyer must know, or reasonably should know, that the person reasonably relies on the lawyer to provide legal services. By itself, a unilateral belief on the part of a person that the lawyer will provide legal services is insufficient to create a lawyer-client relationship.

Confirmed in Writing

2. If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If

a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

3. Whether two or more lawyers constitute a firm can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

4. With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

5. Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud

6. When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under applicable substantive or procedural law and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. Silence may be fraudulent if there is a duty to speak and intent to deceive. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

7. Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person. The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's

or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

8. Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. In emergency circumstances, or situations where a full discussion of risks or alternatives would threaten the best interests of the client or other person, the usual standards for informed consent do not apply.

Screened

9. This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules that expressly permit screening.

10. The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

11. In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

Brad Johnson
In-House Legal Counsel
State Bar of Texas
Filed: April 22, 2021

◆ ◆ ◆
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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/03/21 - 05/09/21 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/03/21 - 05/09/21 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-202101667
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 27, 2021

◆ ◆ ◆
Texas Education Agency

Request for Applications Concerning the 2021-2022 Texas Reading Initiative - Birth to Kinder Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-21-121 is authorized by United States Code, Title 20, Chapter 70, Subchapter II, Part B, Subpart 2, §6642.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-21-121 from eligible applicants, which include education service centers (ESCs) and non-profit organizations. Non-profit organizations must provide proof of their 501(c)(3) tax exempt status and federal tax ID number at the time of application. TEA aims to select approximately one to two grantees to implement a statewide program. Applicants must score a minimum of 75% of the total points on the application to be considered.

Description. TEA seeks to award a Books Beginning at Birth (B3) grant to one or two eligible applicants with the intent of increasing access to books at home for 80,000 children ages 0-4 and providing literacy-based parent education opportunities for 1.1 million families over five years. The grantee(s) will be responsible for overseeing the statewide implementation and expansion of a book distribution and/or book lending program that includes aligned literacy-focused family engagement learning resources and parent education opportunities. The grant period is contingent on continual funding. Grantees must show progress year-to-year in order to be eligible for grant renewals. The B3 program includes the following four main tasks.

Task 1: Establish a plan for recruiting and enrolling families with children ages 0-4 in the B3 program, primarily focusing on Qualified Opportunity Zones across Texas.

Task 2: Increase access to high-quality books for 20,000+ children ages 0-4 each year through book distribution and/or book lending programs.

Task 3: Build parent capacity by providing at least 220,000 families with access to supplemental literacy resources and parent education trainings each year.

Task 4: Collect data related to the B3 program's impact on Kindergarten readiness (literacy skills only) and overall family experience.

Dates of Project. The 2021-2022 Texas Reading Initiative - Birth to Kinder Grant will be implemented during the 2021-2022 school year. Applicants should plan for a starting date of no earlier than August 6, 2021, and an ending date of no later than September 30, 2022.

Project Amount. Approximately \$630,000 is available for funding the 2021-2022 Texas Reading Initiative - Birth to Kinder Grant. It is anticipated that approximately 1-2 grants will be awarded between \$315,000 and \$630,000. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at <https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx> for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to Syllina Valdez at tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than May 28, 2021. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by June 4, 2021. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be submitted to competitivegrants@tea.texas.gov. Applications must be received no later than 11:59 p.m. (Central Time), June 8, 2021, to be considered eligible for funding.

Issued in Austin, Texas, on April 28, 2021.

TRD-202101685
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 28, 2021

◆ ◆ ◆
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 **June 8, 2021**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's 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 **June 8, 2021**. 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: Aqua Utilities, Incorporated; DOCKET NUMBER: 2020-1434-PWS-E; IDENTIFIER: RN101213411; LOCATION: Grandbury, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more wells having a total capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; PENALTY: \$6,160; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: AUSTIN PRECISION PRODUCTS INCORPORATED; DOCKET NUMBER: 2019-1458-MLM-E; IDENTIFIER: RN103168571; LOCATION: Leander, Williamson County; TYPE OF FACILITY: firearms manufacturing; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; 30 TAC §327.5(a), by failing to immediately abate and contain a spill or discharge; 30 TAC §335.4(1) and TWC, §26.121(a)(1), by failing to not cause, suffer, allow, or permit the unauthorized disposal of industrial solid waste into or adjacent to any water in the state; and 30 TAC §335.6(h), by failing to submit a written notice to the TCEQ which includes the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity 90 days prior to engaging in such activities; PENALTY: \$11,813; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT:

\$4,725; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2020-1092-AIR-E; IDENTIFIER: RN100825249; LOCATION: Sweeny, Brazoria 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 22690 and PSDTX751M1, Special Conditions Number 1, Federal Operating Permit Number O2151, 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: \$7,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,000; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Hitchcock; DOCKET NUMBER: 2019-0880-MWD-E; IDENTIFIER: RN101920031; LOCATION: Hitchcock, Galveston County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and §319.11(b) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010690001, Monitoring and Reporting Requirements Number 2.a, by failing to properly preserve effluent samples; 30 TAC §305.125(1), and TPDES Permit Number WQ0010690001, Monitoring and Reporting Requirements Number 7.a, by failing to report an unauthorized discharge orally to the Regional Office within 24 hours of becoming aware of the noncompliance, and in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010690001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010690001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: \$51,251; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$51,251; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: City of Mart; DOCKET NUMBER: 2019-0338-MWD-E; IDENTIFIER: RN102079274; LOCATION: Mart, McLennan County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (9)(A) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010645001, Monitoring and Reporting Requirements Number 7.b.i, by failing to report unauthorized discharges orally to the Regional Office within 24 hours of becoming aware of the noncompliance, and in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; 30 TAC §305.125(1) and (12) and TPDES Permit Number WQ0010645001, Permit Conditions Number 1.a, by failing to accurately report monitoring activities; 30 TAC §305.125(1) and TPDES Permit Number WQ0010645001, Monitoring and Reporting Requirements Number 5, by failing to have automatic flow measuring devices accurately calibrated by a trained person at plant start-up and thereafter not less often than annually; 30 TAC §305.125(1) and §319.11(c) and TPDES Permit Number WQ0010645001, Definitions and Standard Permit Conditions Number 2.e, by failing to properly analyze effluent samples according to the permit; 30 TAC §30.350(d) and §305.125(1) and TPDES Permit Number WQ0010645001, Other Requirements Number 1, by failing to ensure that the facility is operated a minimum

of five days per week by a licensed chief operator or operator holding the required level of license or higher; 30 TAC §312.142(a), by failing to apply for and receive a registration from the executive director prior to commencing operations to transport biosolids/sewage sludge, water treatment residuals, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010645001, Operational Requirements Number 1 and Permit Conditions Number 2.g, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained, and failing to prevent the unauthorized discharge of municipal waste into or adjacent to any water of the state; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010645001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §319.9(d), by failing to assure the quality of all measurements through the use of blanks, standards, duplicate analyses, and spikes; 30 TAC §305.125(1) and (11)(B) and §319.7(c) and TPDES Permit Number WQ0010645001, Monitoring and Reporting Requirements Number 3.b, by failing to maintain monitoring and reporting records at the facility; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010645001, Interim and Final Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: \$34,675; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$27,740; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of Overton; DOCKET NUMBER: 2020-1461-MWD-E; IDENTIFIER: RN102096203; LOCATION: Overton, Rusk 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 WQ0010242001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: City of Robstown; DOCKET NUMBER: 2020-0533-MWD-E; IDENTIFIER: RN104347729; LOCATION: Robstown, Nueces County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5), and Texas Pollutant Discharge Elimination System Permit Number WQ0010261001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; and TWC, §317.2(c)(5)(B), by failing to maintain the maximum required manhole spacing in the collection system; PENALTY: \$22,050; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$17,640; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 6300 Ocean Drive, Unit 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: CONVERSE STAR GROCERY LLC; DOCKET NUMBER: 2020-1457-PST-E; IDENTIFIER: RN102377082; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(c)(1) and (a), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days,

and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$5,939; ENFORCEMENT COORDINATOR: Terrany Binford, (512) 567-3302; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: DSCI INCORPORATED; DOCKET NUMBER: 2020-1341-WQ-E; IDENTIFIER: RN111014114; LOCATION: Springtown, Parker County; TYPE OF FACILITY: residential development project; RULES VIOLATED: TWC, §26.121(a)(2), by failing to prevent an unauthorized discharge of sediment into or adjacent to any water in the state; and 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$4,750; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: EL SAUZ Water Supply Corporation; DOCKET NUMBER: 2020-1445-PWS-E; IDENTIFIER: RN101440311; LOCATION: Roma, Starr County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes (TTHM) based on the locational running annual average; and 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the executive director within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for TTHM for Stage 2 Disinfection Byproducts at Site 2 during the second quarter of 2020; PENALTY: \$3,532; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(11) COMPANY: FORT AUSTIN LIMITED PARTNERSHIP dba Brookdale Broadway Cityview; DOCKET NUMBER: 2019-0820-PST-E; IDENTIFIER: RN101548428; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: emergency generator facility; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank system; PENALTY: \$2,979; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Gemini HDPE LLC; DOCKET NUMBER: 2020-1179-AIR-E; IDENTIFIER: RN100229905; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 106824, Special Conditions Number 1, Federal Operating Permit Number O3758, General Terms and Conditions and Special Terms and Conditions Number 9, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: \$129,000; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Landmark Construction LLC; DOCKET NUMBER: 2020-1442-WQ-E; IDENTIFIER: RN110887551; LOCATION: Woodbranch, Montgomery County; TYPE OF FACILITY: residential construction site; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System General Permit Number TXR1584AP, Part III, Section F.6. and G.1., by failing to install and maintain best management practices at the site which resulted in a discharge of pollutants; PENALTY: \$3,000;

ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Lone Star NGL Fractionators LLC; DOCKET NUMBER: 2020-1439-AIR-E; IDENTIFIER: RN106018260; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§116.115(c), 116.615(2), and 122.143(4), Standard Permit Registration Number 93813, Federal Operating Permit (FOP) Number O3586, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 12 and 15, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §122.143(4) and §122.146(2)(A), FOP Number O3586, GTC and STC Number 16, and THSC, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$14,250; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Lyondell Chemical Company; DOCKET NUMBER: 2020-1403-AIR-E; IDENTIFIER: RN102523107; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 9395, Special Conditions Number 1, Federal Operating Permit Number O1421, General Terms and Conditions and Special Terms and Conditions Number 22, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,426; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,170; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: MCLANE FOODSERVICE, INCORPORATED; DOCKET NUMBER: 2020-1205-PST-E; IDENTIFIER: RN101557536; LOCATION: Carrollton, Dallas County; TYPE OF FACILITY: emergency generator; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: MDC Texas Operator LLC; DOCKET NUMBER: 2020-0978-AIR-E; IDENTIFIER: RN110681970; LOCATION: Pecos, Reeves County; TYPE OF FACILITY: oil and gas processing site; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; and 30 TAC §101.221(a) and THSC, §382.085(b), by failing to maintain all emissions control equipment in good condition and operated properly during operation of the site; PENALTY: \$9,062; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(18) COMPANY: Meister Sealcoat & Supplies, LLC; DOCKET NUMBER: 2020-1441-IHW-E; IDENTIFIER: RN102235769; LOCATION: Lancaster, Dallas County; TYPE OF FACILITY: sealant production; RULE VIOLATED: 30 TAC §335.4, by failing to not cause, suffer, allow, or permit the unauthorized disposal of industrial hazardous waste; PENALTY: \$3,937; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Monarch Utilities I, L.P.; DOCKET NUMBER: 2020-1182-PWS-E; IDENTIFIER: RN102318532; LOCATION: Pointblank, San Jacinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; PENALTY: \$150; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: Odfjell Terminals (Houston) Incorporated; DOCKET NUMBER: 2020-1180-AIR-E; IDENTIFIER: RN100218411; LOCATION: Seabrook, Harris County; TYPE OF FACILITY: organic liquid storage terminal; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 8865, Special Conditions Number 1, Federal Operating Permit Number O3027, General Terms and Conditions and Special Terms and Conditions Number 17, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: \$23,850; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$9,540; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3424; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: SAI JBA INC dba Saturn Fuel Center; DOCKET NUMBER: 2020-1412-PST-E; IDENTIFIER: RN102789906; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1) and TCEQ Agreed Order, Docket Number 2017-1407-PST-E, Ordering Provision Number 2.a, by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$45,000; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Tamine, LLC dba Scotties Exxon; DOCKET NUMBER: 2019-1002-PST-E; IDENTIFIER: RN102285459; LOCATION: Seven Points, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,143; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: Targa Downstream LLC; DOCKET NUMBER: 2020-1378-AIR-E; IDENTIFIER: RN100214212; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: petroleum hydrocarbon storage and loading terminal; RULES VIOLATED: 30 TAC §§101.20(2), 115.214(a)(3)(A), 115.216(4)(B), and 122.143(4), 40 Code of Federal Regulations §63.567(i), Federal Operating Permit Number O614, General Terms and Conditions and Special Terms and Conditions Number 12.G, and Texas Health and Safety Code, §382.085(b), by failing to verify that the marine vessel has passed an annual vapor tightness test prior to loading a marine vessel with a volatile organic compound which has a vapor pressure equal to or greater than 0.5 pound per square inch absolute under actual storage conditions; PENALTY: \$37,800; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$15,120; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682;

REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: West Harbour, LLC; DOCKET NUMBER: 2020-1440-EAQ-E; IDENTIFIER: RN111069696; LOCATION: Austin, Travis County; TYPE OF FACILITY: commercial development project; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$10,125; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(25) COMPANY: Worthy Lee Williams dba Stewarts Tire Shop; DOCKET NUMBER: 2019-1422-MSW-E; IDENTIFIERS: RN110789161 and RN109241745; LOCATIONS: Newton, Newton County and Jasper, Jasper County; TYPE OF FACILITY: tire replacement facilities; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste (MSW); 30 TAC §328.56(c), by failing to use manifests, work orders, invoices, or other records to document the shipment and management of all scrap tires generated on-site; 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; and 30 TAC §328.56(c), by failing to use manifests, work orders, invoices, or other records to document the removal and management of all scrap tires generated on-site; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202101658

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: April 27, 2021



Enforcement Orders

An agreed order was adopted regarding Texas Turbine, LLC, Docket No. 2018-1027-IHW-E on April 28, 2021, assessing \$78,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, 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 Kickin' A Inc., Docket No. 2019-0597-WQ-E on April 28, 2021, assessing \$17,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was adopted regarding Day Night Food Mart LLC, Docket No. 2019-0724-PST-E on April 28, 2021, assessing \$6,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, 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 Chevron Phillips Chemical Company LP, Docket No. 2019-1527-AIR-E on April 28, 2021, assessing \$45,225 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, 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 the City of Conroe, Docket No. 2019-1587-MWD-E on April 28, 2021, assessing \$6,750 in administrative penalties. Information 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 RANCHO DEL LAGO, INC., Docket No. 2020-0018-MWD-E on April 28, 2021, assessing \$45,417 in administrative penalties with \$9,083 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 DNR BUSINESS, INC. dba Sunmart 121, Docket No. 2020-0358-PST-E on April 28, 2021, assessing \$14,137 in administrative penalties with \$2,827 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Atkins, 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 LALINDA LLC dba Shell Quick Stop, Docket No. 2020-0363-PST-E on April 28, 2021, assessing \$15,297 in administrative penalties with \$3,059 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, 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 Ameriforge Corporation, Docket No. 2020-0515-IWD-E on April 28, 2021, assessing \$16,875 in administrative penalties with \$3,375 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 Ricardo Gamboa, Docket No. 2020-0679-PST-E on April 28, 2021, assessing \$9,041 in administrative penalties with \$1,808 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 Moss Bluff Hub, LLC, Docket No. 2020-0687-AIR-E on April 28, 2021, assessing \$19,125 in administrative penalties with \$3,825 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Quadvest, L.P., Docket No. 2020-0711-MWD-E on April 28, 2021, assessing \$10,937 in administrative penalties with \$2,187 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bayport Polymers LLC, Docket No. 2020-0824-AIR-E on April 28, 2021, assessing \$70,801 in administrative penalties with \$14,160 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Garland, Docket No. 2020-0879-AIR-E on April 28, 2021, assessing \$7,500 in administrative penalties with \$1,500 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 Sekisui Specialty Chemicals America, LLC, Docket No. 2020-0939-AIR-E on April 28, 2021, assessing \$7,650 in administrative penalties with \$1,530 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 Leander Independent School District, Docket No. 2020-0983-PST-E on April 28, 2021, assessing \$29,063 in administrative penalties with \$5,812 deferred. Information concerning any aspect of this order may be obtained by contacting Carolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202101689

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 28, 2021



Enforcement Orders

An agreed order was adopted regarding CATEX Acquisitions, LLC, Docket No. 2019-1784-MWD-E on April 27, 2021, assessing \$1,625 in administrative penalties with \$325 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Johan Gerrit Koke, Docket No. 2020-0095-AGR-E on April 27, 2021, assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Frost, Docket No. 2020-0396-PWS-E on April 27, 2021, assessing \$1,673 in administrative penalties with \$334 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 RONNIE W. BORDERS, LTD., Docket No. 2020-0674-WR-E on April 27, 2021, assessing \$2,000 in administrative penalties with \$400 deferred. Information 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 The LETCO Group, LLC, Docket No. 2020-0703-WQ-E on April 27, 2021, assessing \$1,312 in administrative penalties with \$262 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.

A field citation was adopted regarding PetroSwift, L.L.C., Docket No. 2020-0871-WQ-E on April 27, 2021, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CAPROCK DISTRIBUTORS, LLC, Docket No. 2020-0877-OSS-E on April 27, 2021, assessing \$250 in administrative penalties with \$50 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, 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 Martin Garza Neira, Docket No. 2020-0928-MSW-E on April 27, 2021, assessing \$1,187 in administrative penalties with \$237 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 David Lee Sheffield dba Texas Landing Utilities, Docket No. 2020-0989-PWS-E on April 27, 2021, assessing \$1,069 in administrative penalties with \$855 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, 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 Caterpillar Inc., Docket No. 2020-1048-AIR-E on April 27, 2021, assessing \$3,375 in administrative penalties with \$675 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 Aqua Development, Inc., Docket No. 2020-1070-PWS-E on April 27, 2021, assessing \$150 in administrative penalties with \$30 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 City of Manvel, Docket No. 2020-1097-PWS-E on April 27, 2021, assessing \$750 in administrative penalties with \$150 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 Coon Creek Club, Docket No. 2020-1098-PWS-E on April 27, 2021, assessing \$787 in administrative penalties with \$157 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 City of Three Rivers, Docket No. 2020-1142-AIR-E on April 27, 2021, assessing \$938 in administrative penalties with \$187 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 EAN Holdings, LLC dba Alamo Rent-A-Car, Docket No. 2020-1193-MLM-E on April 27, 2021, assessing \$1,040 in administrative penalties with \$208 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.

TRD-202101691

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 28, 2021



Notice of District Petition

Notice issued April 22, 2021

TCEQ Internal Control No. D-09032020-006; Louis Alex Tsakiris (Petitioner) filed a petition for creation of Bell County Municipal Utility District No. 4 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 202.198 acres located within Bell County, Texas; and (4) none of the land within the proposed District is within the corporate limits of any city. The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, maintain, operate, repair, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, industrial and commercial wastes; (3) gather, conduct, divert, control, abate, and amend local storm waters or other harmful excesses of water in the District; and (4) purchase, construct, acquire, provide, maintain, operate, repair, improve, and extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed 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 that the cost of said project will be approximately \$21,300,000.

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 re-

quest 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.texas.gov.

TRD-202101673

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 27, 2021



Notice of Minor Amendment: Radioactive Material License Number R01400

APPLICATION: Waste Control Specialists LLC (WCS) applied to the Texas Commission on Environmental Quality (TCEQ) for minor amendment to Radioactive Material License R04100 with an application received September 9, 2020, to revise procedure EV-1.1.0, *Consolidated Radiological Environmental Monitoring Program*, to authorize the disposal of demilitarized depleted uranium rounds in the In-Cell Non-Containerized Disposal Unit in soft-sided bags, change the date that the annual environmental monitoring report is due from April 30 to May 30, to authorize the treatment of radioactive waste that is exempted under license condition (LC) 192 for disposal in WCS' resource conservation and recovery act (RCRA) disposal facility in the same locations where this waste is authorized to be sampled and inspected, and modify the Waste Acceptance Criteria in Attachment C to change the notification requirements for receipt date changes for low-level radioactive waste (LLRW) shipments that are shipped by rail. WCS submitted a modification to this application dated November 4, 2020, to increase the final decommissioning portion of the financial assurance for the radioactive waste storage and processing facility to include decommissioning of the Straddlecarrier Unloading Building and the Railcar Pedestal Unloading Building. WCS submitted a modification to this application dated December 9, 2020, to authorize the time that the Licensee can store transuranic waste that originated at the Los Alamos National Laboratory (LANL) from December 23, 2020, to December 23, 2022, to match recent changes to the Nuclear Regulatory Commission's Order (Docket No., 70-7005).

Radioactive Material License R04100 authorizes commercial disposal of LLRW and storage and processing of radioactive waste. WCS currently conducts a variety of waste management services at its site in Andrews County, Texas and is the licensed operator of the Compact Waste Facility and the Federal Waste Facility for commercial and federal LLRW disposal. The land disposal facility and the storage and processing facility are located at 9998 State Highway 176 West in Andrews County, Texas.

The Executive Director has determined that a minor amendment to the license is appropriate because the amendment application does not pose a detrimental impact and is in consideration of maintaining public health and safety, worker safety, and environmental health. The license will be amended to update and revise procedure EV-1.1.0; authorize the disposal of demilitarized depleted uranium rounds in the In-Cell Non-Containerized Disposal Unit in soft-sided bags; change the

date that the annual environmental monitoring report is due from April 30 to May 31; change the final decommissioning portion of the financial assurance for the storage and processing facility from \$5,023,825 to \$5,783,609 in 2018 dollars; authorize the processing of radioactive waste that is exempted under LC 192 for disposal in the WCS' RCRA disposal facility using solidification, stabilization, chemical oxidation and/or reduction, or macro-encapsulation in the Stabilization Building or the Mixed Waste Stabilization Area; change the time limit that the licensee is authorized to possess the transuranic waste that originated from LANL from a maximum of 6 years (December 23, 2020) to, by initiative of the Executive Director, 6 years and 251 days (August 31, 2021); tie down the minor amendment application dated August 21, 2020, and the letter from WCS dated November 13, 2020; and modify the notification requirements for LLRW shipments in the Waste Acceptance Criteria in Attachment C for clarity and to revise these requirements for shipments by rail. By initiative of the Executive Director, the proposed amendment will also modify several license conditions for clarity and to update the license, require the Radiation Safety Officer to have a two-year refresher course, and to require the licensee to notify the Executive Director of any confirmed exceedance of the screening levels in the radioactive environmental monitoring program.

The following link to an electronic map of the facility's general location is provided as a public courtesy and is not part of the notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-103.063055%2C32.4425&level=12>. For an exact location, refer to the application.

The TCEQ Executive Director has completed the technical review of the amendment and supporting documents and has prepared a draft license. The draft license, if approved, would refine and add detail to the conditions under which the land disposal facility and the storage and processing facility must operate with regard to existing authorized receipt of wastes and does not change the type or concentration limits of wastes to be received. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements. The license amendment application with supporting documents, the Executive Director's technical summary, and the amended draft license are available for viewing and copying at the Andrews Public Library, 109 NW 1st Street, Andrews, Texas, 79714.

INFORMATION AVAILABLE ONLINE: For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION: Public comments and requests must be submitted either electronically at <https://www.tceq.texas.gov/agency/decisions/cc/comments.html>, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. 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.

PUBLIC COMMENT/PUBLIC MEETING: You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the amendment. The TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the applications/amendments or if requested by a local legislator. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director may consider all timely comments and prepare a response to all relevant and material or significant public comments.

EXECUTIVE DIRECTOR ACTION: The amendment is subject to Commission rules which direct the Executive Director to act on behalf of the Commission and provide authority to the Executive Director to issue final approval of the application for amendment after consideration of all timely comments submitted on the application.

MAILING LIST: If you submit public comments or a request for reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific 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 license or permit number; and/or (2) the mailing list for a specific county. If you wish 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.

All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 **or electronically at** <https://www.tceq.texas.gov/agency/decisions/cc/comments.html> within 10 days from the date of this notice or 10 days from the date of publication in the *Texas Register*, whichever is later.

AGENCY CONTACTS AND INFORMATION: If you need more information about this license application or the licensing process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information about the TCEQ can be found at our web site at [https://www.tceq.texas.gov](http://www.tceq.texas.gov).

Further information may also be obtained from WCS at the address stated above or by calling Mr. Jay Cartwright at (432) 525-8698.

TRD-202101643

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 23, 2021



Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 8, 2021**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 8, 2021**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: NICO-TYME WATER CO-OP, INC.; DOCKET NUMBER: 2019-1478-PWS-E; TCEQ ID NUMBER: RN101215788; LOCATION: approximately eight miles southwest of Elmendorf near the intersection of Nico-Tyme Road and Talisto Road, Bexar County; TYPE OF FACILITY: public water system; RULES VIOLATED: TCEQ Agreed Order (AO) Number 2017-1588-PWS-E, Ordering Provision Number 2.a.iii., by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on April 17, 2017, at least one raw groundwater *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive sample was collected; 30 TAC §290.110(e)(4)(A) and (f)(3) and TCEQ AO Number 2017-1588-PWS-E, Ordering Provision Number 2.c., by failing to submit a Disinfection Level Quarterly Operating Report (DLQOR) to the executive director (ED) by the tenth day of the month following the end of each quarter for the third quarter of 2018 through the second quarter of 2019; 30 TAC §290.117(c)(2)(D), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2010 - December 31, 2018 monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to submit a DLQOR for the first quarter of 2018; PENALTY: \$962; STAFF ATTORNEY: Roslyn Dubberstein, Litigation, MC 175, (512) 239-0683; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202101664

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: April 27, 2021



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed 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 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 **June 8, 2021**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and

rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 8, 2021**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Big Diamond, LLC dba Corner Store 3937; DOCKET NUMBER: 2019-0798-PST-E; TCEQ ID NUMBER: RN102055415; LOCATION: 1203 Roosevelt Avenue, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(2) and (c)(4)(A) and (C), by failing to have the corrosion protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years - specifically, respondent had not conducted the triennial testing of the corrosion protection system; 30 TAC §334.74, by failing to investigate and confirm within 30 days after monitoring results from a release detection method indicated a release may have occurred - specifically, respondent did not investigate within 30 days after statistical inventory reconciliation (SIR) records for UST Number 2 for November and December 2018, and January 2019 indicated releases may have occurred; and 30 TAC §334.50(d)(9)(A)(iv) and §334.72, by failing to report to the TCEQ within 24 hours after monitoring results from a release detection method indicated a release may have occurred - specifically, respondent did not report to the TCEQ within 24 hours after SIR records for UST Number 2 for November and December 2018, and January 2019 indicated releases may have occurred; PENALTY: \$11,879; STAFF ATTORNEY: Vas Manthos, Litigation, MC 175, (512) 239-0181; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: RIESEL FOOD MART, L.L.C. dba End Zone Mini Mart; DOCKET NUMBER: 2020-0660-PST-E; TCEQ ID NUMBER: RN101673275; LOCATION: 402 South Memorial Street, Riesel, McLennan County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.51(a)(6), by failing to assure that all spill and overfill prevention devices are maintained in good operating condition - specifically, the spill bucket for tank 1, compartment B was cracked; and 30 TAC §334.10(b)(2), by failing to assure that all recordkeeping requirements are met - specifically, release detection records and spill and overfill prevention records were not provided; PENALTY: \$1,875; STAFF ATTORNEY: Roslyn Dubberstein, Litigation, MC 175, (512) 239-0683; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: SRI SUBASJI INC dba Garland Food Mart; DOCKET NUMBER: 2019-1758-PST-E; TCEQ ID NUMBER: RN102147279; LOCATION: 4715 Broadway Boulevard, Garland, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES

VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; PENALTY: \$3,750; STAFF ATTORNEY: Jim Sallans, Litigation, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202101663

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: April 27, 2021



Notice of Water Quality Application

The following notice was issued on April 23, 2021.

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

The Texas Commission on Environmental Quality (TCEQ) has initiated a major amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004627000 issued to Quality Product Finishing Inc., which operates Quality Product Finishing Inc., a pre-paint cleaning and coating job shop, to change the daily average and maximum effluent limits for chloride from 464 mg/L and 984 mg/L to 550 mg/L and 1166 mg/L, respectively, and the daily average and maximum effluent limits for sulfate from 178 mg/L and 378 mg/L to monitoring requirements, the daily average and maximum effluent limits for nickel from 0.191 mg/L and 0.405 mg/L to 0.413 mg/L and 0.874 mg/L, and the daily average and maximum loadings for nickel from 0.0398 lbs/day and 0.101 lbs/day to 0.086 lbs/day and 0.182 lbs/day at Outfall 001. The facility is located at 9610 Fairbanks North Houston Road, approximately 17 miles northwest of the City of Houston, in Harris County, Texas 77064.

If you need more information about these permit applications 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 www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202101644

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 23, 2021



Update to the Water Quality Management Plan (WQMP)

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft April 2021 Update to the WQMP for the State of Texas.

Download the draft April 2021 WQMP Update at https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas. Please periodically check the following website for updates, in the event the TCEQ Library is closed due to COVID-19 restrictions: https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_comment.html.

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than **5:00 p.m., June 8, 2021**.

How to Submit Comments

Comments must be submitted in writing to:

Nancy Vignali Texas Commission on Environmental Quality Water Quality Division, MC 150 P.O. Box 13087 Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420 *or* emailed to Nancy Vignali at Nancy.Vignali@tceq.texas.gov, but must be followed up with written comments by mail within five working days of the fax or email date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at Nancy.Vignali@tceq.texas.gov.

TRD-202101659

Robert Martinez

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 27, 2021



General Land Office

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 April 12, 2021.

Facts

Based on an investigation conducted by Texas General Land Office-Region 2 staff on March 10, 2021, the Commissioner of the General Land Office (GLO), has determined that a 38' sailboat, vessel identified as GLO Vessel Tracking Number 2-85207 is in a wrecked, derelict, and substantially dismantled condition without the consent of the commissioner. The vessel is located at Old Brazos River at old Western Seafood Dock. There are no names, markings or identification numbers on the vessel, consequently, it is impossible to determine the vessel's owner of record.

The GLO determined that pursuant to OSPRA §40.254(b)(2)(B), that the vessel does have value. Finally, the GLO determined that, because of the vessel's location and condition, the vessel poses an unreasonable threat to public health & safety and 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 Commissioner recommends that the vessel be removed from Texas coastal waters and 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 ten (10) 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, Texas 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 our office at (512) 463-2613.

Rev. 08/2020

TRD-202101656

Mark A. Havens

Chief Clerk

General Land Office

Filed: April 26, 2021



Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 25, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for Medicaid Calendar Fee Review Updates to be held on May 25, 2021, 9:00 a.m. CDT at:

<https://attendee.gotowebinar.com/register/1693716712273262349>

After registering, you will receive a confirmation email containing information about joining the webinar.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Proposal. The payment rates for the Medicaid Biennial Calendar Fee Review are proposed to be effective September 1, 2021, for the following services:

S Codes Type of Service (TOS) 1,2,8

S Codes TOS 9, E, J

Any Combination 1/2/I/T

Diagnostic Radiology

Durable Medical Equipment (DME) E Codes Wheelchairs and Other Items

DME E Codes Respiratory Equipment

Evaluation and Management

Hearing Aids

Medical and Surgical Supplies

Medical Nutrition Therapy

Nonclinical Labs

Nonclinical Labs - Hospitals

Nonclinical Labs - Rural Hospitals

Physician Administered Drugs (PAD) Non-Oncology

PAD Non-Oncology Medication-Assisted Treatment (MAT)

PAD Oncology

PAD Vaccines

Telemedicine, Telehealth, and Telemonitoring

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8021, which addresses the reimbursement methodology for home health services;

§355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8061, which addresses the reimbursement methodology for outpatient hospital imaging;

§355.8141, which addresses the reimbursement methodology for certified hearing aid services; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after May 11, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates 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 e-mail to PFDAcuteCare@hhs.texas.gov. In addition, written comments may be sent by overnight mail to Texas Health and Human Ser-

vices 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 quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202101676

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 28, 2021



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review of Indian Health Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 25, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review of Indian Health Services.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for Medicaid Calendar Fee Review Updates to be held on May 25, 2021, 9:00 a.m. CDT at:

<https://attendee.gotowebinar.com/register/1693716712273262349>

After registering, you will receive a confirmation email containing information about joining the webinar.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Proposal. The payment rates for the Indian Health Services are proposed to be effective January 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code §355.8620, which addresses the reimbursement methodology for Services Provided in Indian Health Service and Tribal Facilities.

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after May 11, 2021. Interested parties may obtain a copy of the briefing packet before the hearing by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates may be submitted instead 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, overnight mail, special delivery mail, hand delivery, fax, or e-mail:

U.S. Mail:

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery:

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

Brown-Heatly Building

4900 North Lamar Blvd

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax Attention: Provider Finance at (512) 730-7475

E-mail: PFDAcuteCare@hhs.texas.gov

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 quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should call Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202101677

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 28, 2021



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Allergy Testing

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 25, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Allergy Testing.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for the Medical Policy Review of Allergy Testing to be held on May 25, 2021, at 9:00 a.m. CDT at:

<https://attendee.gotowebinar.com/register/1693716712273262349>

After registering, you will receive a confirmation email containing information about joining the webinar.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Proposal. The payment rates for the Medical Policy Review of Allergy Testing are proposed to be effective September 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after May 11, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates 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 e-mail to PFDAcuteCare@hhs.texas.gov. 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 quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202101681

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 28, 2021



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Cervical Disc Replacement

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 25, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Cervical Disc Replacement.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for the Medical Policy Review of Cervical Disc Replacement to be held on May 25, 2021, at 9:00 a.m. CDT at:

<https://attendee.gotowebinar.com/register/1693716712273262349>

After registering, you will receive a confirmation email containing information about joining the webinar.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be

archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Proposal. The payment rates for the Medical Policy Review of Cervical Disc Replacement are proposed to be effective September 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1, Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8121, which addresses the reimbursement methodology for ambulatory surgical centers; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps) and the THSteps Comprehensive Care Program (CCP).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after May 11, 2021. Interested parties may obtain a copy of the briefing packet before the hearing by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates 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 e-mail to PFDAcuteCare@hhs.texas.gov. 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 quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202101674

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 27, 2021



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Cytogenetic Constitutional (Genome-wide) Microarray Analysis

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 25, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Cytogenetic Constitutional (Genome-wide) Microarray Analysis.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for the Medical Policy Review of Cytogenic Constitutional (Genome-wide) Microarray Analysis to be held on May 25, 2021, at 9:00 a.m. CDT at:

<https://attendee.gotowebinar.com/register/1693716712273262349>

After registering, you will receive a confirmation email containing information about joining the webinar.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Proposal. The payment rates for the Medical Policy Review of Cytogenic Constitutional (Genome-wide) Microarray Analysis are proposed to be effective September 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1, Texas Administrative Code:

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps) and the THSteps Comprehensive Care Program (CCP) and;

§355.8610, which addresses the reimbursement for clinical laboratory services.

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after May 11, 2021. Interested parties may obtain a copy of the briefing packet before the hearing by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates 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 e-mail to PFDAcuteCare@hhs.texas.gov. 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 quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202101680

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 28, 2021



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Diabetic Equipment and Supplies

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 25, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Diabetic Equipment and Supplies.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for the Medical Policy Review of Diabetic Equipment and Supplies to be held on May 25, 2021, at 9:00 a.m. CDT at:

<https://attendee.gotowebinar.com/register/1693716712273262349>

After registering, you will receive a confirmation email containing information about joining the webinar.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Proposal. The payment rates for the Medical Policy Review of Diabetic Equipment and Supplies Policy are proposed to be effective September 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8023, which addresses the reimbursement methodology durable medical equipment, prosthetics, orthotics, and supplies; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after May 11, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates 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 e-mail to PFDAcuteCare@hhs.texas.gov. 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 quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202101678

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 28, 2021



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Hepatitis B Vaccine

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 25, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Hepatitis B Vaccine.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for the Medical Policy Review of Hepatitis B Vaccine to be held on May 25, 2021, at 9:00 a.m. CDT at:

<https://attendee.gotowebinar.com/register/1693716712273262349>

After registering, you will receive a confirmation email containing information about joining the webinar.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Proposal. The payment rates for the Medical Policy Review of Hepatitis B Vaccine are proposed to be effective September 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after May 11, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates 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 e-mail to PFDAcuteCare@hhs.texas.gov. 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 quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202101682

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 28, 2021



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Prostate Surgeries

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 25, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Prostate Surgeries.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please Register for the HHSC Public Rate Hearing for the Medical Policy Review of Prostate Surgeries to be held on May 25, 2021, at 9:00 a.m. CDT at:

<https://attendee.gotowebinar.com/register/1693716712273262349>

After registering, you will receive a confirmation email containing information about joining the webinar.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Proposal. The payment rates for the Medical Policy Review of Prostate Surgeries are proposed to be effective September 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1, Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8121, which addresses the reimbursement methodology for ambulatory surgical centers; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps) and the THSteps Comprehensive Care Program (CCP).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be available at <https://rad.hhs.texas.gov/rate-packets> on or after May 11, 2021. Interested parties may obtain a copy of the briefing packet before the hearing by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates 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 e-mail to PFDAcuteCare@hhs.texas.gov. In addition, written comments may be sent by overnight mail to Texas Health and Human Ser-

vices Commission, Attention: Provider Finance, Mail Code H-400, Brown-Healty 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 quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202101675

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 28, 2021



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Subcutaneous Implantable Cardioverter Defibrillator

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 25, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Subcutaneous Implantable Cardioverter Defibrillator (S-ICD).

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for the Medical Policy Review of Subcutaneous Implantable Cardioverter Defibrillator to be held on May 25, 2021, at 9:00 a.m. CDT at:

<https://attendee.gotowebinar.com/register/1693716712273262349>

After registering, you will receive a confirmation email containing information about joining the webinar.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Proposal. The payment rates for the Medical Policy Review of Subcutaneous Implantable Cardioverter Defibrillator are proposed to be effective September 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8023, which addresses the reimbursement methodology durable medical equipment, prosthetics, orthotics, and supplies;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8121, which addresses the reimbursement methodology for ambulatory surgical centers; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps);

Rate Hearing Packet. A briefing packet describing the proposed payments rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after May 11, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates 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 e-mail to PFDAcuteCare@hhs.texas.gov. 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-Healty 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 quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202101679

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 28, 2021



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Transverse Abdominis Plane (TAP) Blocks

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 25, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of TAP Blocks.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for the Medical Policy Review of TAP Blocks to be held on May 25, 2021, at 9:00 a.m. CDT at:

<https://attendee.gotowebinar.com/register/1693716712273262349>

After registering, you will receive a confirmation email containing information about joining the webinar.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Proposal. The payment rates for the Medical Policy Review of TAP Blocks are proposed to be effective September 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8121, which addresses the reimbursement methodology for ambulatory surgical centers; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after May 11, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates 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 e-mail to PFDAcuteCare@hhs.texas.gov. 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 quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202101683

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 28, 2021



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Review of Healthcare Common Procedure Coding System (HCPCS) Updates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 25, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Quarterly HCPCS Updates.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for Quarterly HCPCS Updates to be held on May 25, 2021, 9:00 a.m. CDT at:

<https://attendee.gotowebinar.com/register/1693716712273262349>

After registering, you will receive a confirmation email containing information about joining the webinar.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be

archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Proposal. The payment rates for the Quarterly HCPCS Updates are proposed to be effective September 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://rad.hhs.texas.gov/rate-packets> on or after May 11, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates 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 e-mail to PFDAcuteCare@hhs.texas.gov. 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 quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202101684

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 28, 2021



Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Farmers Life Insurance Company, a foreign life, accident and/or health company. The home office is in Knoxville, Tennessee.

Application for Centene Venture Insurance Company Texas, a domestic Health Maintenance Organization (HMO) DBA (doing business as) Ascension Complete. The home office is in Austin, Texas.

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-202101688

◆ ◆ ◆

Texas Lottery Commission

Scratch Ticket Game Number 2325 "BONUS GAME BINGO"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2325 is "BONUS GAME BINGO". The play style is "bingo".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2325 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2325.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and FREE SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2325 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	

I26	
I27	
I28	
I29	
I30	
N31	
N32	
N33	
N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
G46	
G47	
G48	
G49	
G50	
G51	
G52	
G53	

G54	
G55	
G56	
G57	
G58	
G59	
G60	
O61	
O62	
O63	
O64	
O65	
O66	
O67	
O68	
O69	
O70	
O71	
O72	
O73	
O74	
O75	
01	
02	
03	
04	
05	
06	

07	
08	
09	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	

35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	
61	
62	

63	
64	
65	
66	
67	
68	
69	
70	
71	
72	
73	
74	
75	
FREE SYMBOL	

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2325), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2325-0000001-001.

H. Pack - A Pack of the "BONUS GAME BINGO" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 125 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 125 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable

rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "BONUS GAME BINGO" Scratch Ticket Game No. 2325.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BONUS GAME BINGO" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose the Play Symbols as indicated per the game instructions from the total one hundred thirty-seven (137) Play Symbols. BONUS GAME BINGO PLAY INSTRUCTIONS: The player completely scratches the "CALLER'S CARD" area to reveal twenty-eight (28) Bingo Numbers. The player scratches only those Bingo Numbers on the four (4) "BINGO CARDS" that match the "CALLER'S CARD" Bingo Numbers. The player also scratches the "FREE" spaces on the four (4) "BINGO CARDS". If a player matches all Bingo Numbers in a complete vertical, horizontal or diagonal line (five (5) or four (4) numbers + "FREE" space), the player wins the prize in the corresponding prize legend for that "BINGO CARD". If the player matches all Bingo Numbers in all four (4) corners, the player wins the prize in the corresponding prize legend for that "BINGO CARD". If the player matches all Bingo Numbers to complete an "X" (eight (8) numbers + "FREE" space), the player wins the prize in the corresponding prize legend for that "BINGO CARD". Note: Only the highest prize per "BINGO CARD" will be paid. BONUS GAME: The player scratches only those Bingo Numbers in the BONUS GAME card that match the

"CALLER'S CARD" Bingo Numbers. If a player matches all Bingo Numbers in a complete vertical or horizontal line, the player wins the prize in the corresponding arrow for that line. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly one hundred thirty-seven (137) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption. Crossword and Bingo style games do not typically have Play Symbol Captions;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly one hundred thirty-seven (137) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the one hundred thirty-seven (137) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the one hundred thirty-seven (137) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number

font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to five (5) times.

D. BONUS GAME: The "BONUS GAME" Play Symbols (numbers) will be different from each other within the "BONUS GAME".

E. BONUS GAME: The "BONUS GAME" card can win as per the prize structure.

F. BONUS GAME: The "BONUS GAME" card will not have three (3) numbers matched diagonally.

G. BONUS GAME: The "BONUS GAME" card will not have four (4) numbers matched in the 4 corners.

H. BONUS GAME: Each "BONUS GAME" card in a Pack will be different. Two (2) cards match if they have the same Play Symbols (numbers) in the same spots.

I. BINGO: The number range used for each letter (B,I,N,G,O) will be as follows: B (1-15), I (16-30), N (31-45), G (46-60) and O (61-75).

J. BINGO: No matching Play Symbols (numbers) will appear in the "CALLER'S CARD" on winning and Non-Winning Tickets.

K. BINGO: Each of the "CALLER'S CARD" Play Symbols (numbers) will appear on at least one (1) of the four (4) "BINGO CARDS" or on the "BONUS GAME" card.

L. BINGO: Each "BINGO CARD" will contain twenty-four (24) Play Symbols (numbers) and one (1) "FREE" Play Symbol in the center of the card.

M. BINGO: There will be no matching Play Symbols (numbers) on each "BINGO CARD" play area.

N. BINGO: On winning and Non-Winning Tickets, each "BINGO CARD" will be different. Two (2) cards match if they have the same Play Symbols (numbers) in the same spots.

O. BINGO: There can only be one (1) winning pattern on each "BINGO CARD".

P. BINGO: Prizes for "BINGO CARDS" 1-4 are as follows:

CARD 1: LINE=\$2. 4 CORNERS=\$10. X=\$100.

CARD 2: LINE=\$3. 4 CORNERS=\$20. X=\$500.

CARD 3: LINE=\$5. 4 CORNERS=\$50. X=\$1,000.

CARD 4: LINE=\$10. 4 CORNERS=\$100. X=\$30,000.

Q. BINGO: Non-winning "BINGO CARDS" will match a minimum of three (3) Play Symbols (numbers).

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS GAME BINGO" Scratch Ticket Game prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS GAME BINGO" Scratch Ticket Game prize of \$1,000 or \$30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS GAME BINGO" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agreement under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "BONUS GAME BINGO" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "BONUS GAME BINGO" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 28,080,000 Scratch Tickets in Scratch Ticket Game No. 2325. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2325 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	2,751,840	10.20
\$3.00	954,720	29.41
\$5.00	1,404,000	20.00
\$10.00	673,920	41.67
\$15.00	280,800	100.00
\$20.00	280,800	100.00
\$30.00	44,460	631.58
\$50.00	19,890	1,411.76
\$100	11,700	2,400.00
\$500	936	30,000.00
\$1,000	60	468,000.00
\$30,000	18	1,560,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.37. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2325 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2325, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202101690

Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: April 28, 2021

◆ ◆ ◆

Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is soliciting proposals from qualified entities to operate an integrated One-stop Service Delivery System to deliver Workforce Development and Child Care program services in the 26 counties of the Texas Panhandle Workforce Development Area under a single contract.

Workforce Development and Child Care program services provided through the Service Delivery System include, but are not be limited to, those funded and governed by the Workforce Innovation and Opportu-

nity Act, Wagner-Peyser Employment Services, Temporary Assistance for Needy Families and Noncustodial Parent/CHOICES, Supplemental Nutrition Assistance Program Employment and Training, and Child Care grants.

Proposers will be expected to demonstrate the capability to conduct workforce service delivery for all customers groups at the current level and also effectively incorporate the Panhandle Workforce Development Board's stated priorities. The initial term for any award resulting from this solicitation will be one year with the possibility for renewal for up to three additional years.

The proposal schedule is expected to be as follows:

Release Request for Proposals (RFP) - April 30, 2021

Proposers' Conference - May 12, 2021 at 10:00 a.m.

Questions may be submitted in writing to wdrfpquestions@theprpc.org no later than May 19, 2021 at 3:00 p.m.

Deadline for Submission - June 7, 2021 at 3:00 p.m.

A copy of the Request for Proposals (RFP) can be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 Southwest Eighth Ave., Amarillo, Texas 79101 or by download from the Workforce Development section of the Panhandle Regional Planning Commission website at <http://www.theprpc.org/Programs/WorkforceDevelopment/wfprocurement.html>.

An Equal Opportunity Employer / Program

Auxiliary aids and services are available upon request to individuals with disabilities

Relay Texas: 711

TRD-202101600

Leslie Hardin

Workforce Development Program Manager

Panhandle Regional Planning Commission

Filed: April 22, 2021

◆ ◆ ◆

Texas Parks and Wildlife Department

Notice of Availability and Request for Public Comment Within 30 Days

Proposed Draft Natural Resource Damage Assessment Plan; Mountain Creek Lake: Naval Air Station Dallas and Naval Weapons Industrial Reserve Plant, Dallas, Dallas County, Texas

AGENCIES: Texas Parks and Wildlife Department (TPWD), Texas Commission on Environmental Quality (TCEQ), and Texas General Land Office (GLO) (collectively, the Trustees).

ACTION: Notice of availability of a proposed Draft Natural Resource Damage Assessment Plan, Mountain Creek Lake: Naval Air Station Dallas and Naval Weapons Industrial Reserve Plant (Draft Assessment Plan) and of a 30-day period for public comment on the Draft Assessment Plan beginning on the date of publication of this notice.

SUMMARY: This notice serves to inform the public that the Trustees have developed a Draft Assessment Plan to describe how the Trustees

propose to determine and quantify natural resource injuries and damages to Mountain Creek Lake and the associated nearshore zone impacted by the release of oil or hazardous substances at or from Naval Air Station Dallas and the Naval Weapons Industrial Reserve Plant.

This opportunity for public review and comment on the Draft Assessment Plan is made pursuant to 43 CFR § 11.32(c).

ADDRESSES: Interested members of the public may request a copy of the Draft Assessment Plan by contacting Michael Tennant at the TPWD, Inland Fisheries Division, 4200 Smith School Road, Austin, Texas 78744; by phone at (512) 389-8754; or by email at michael.tennant@tpwd.texas.gov.

DATES: Public comments on the Draft Assessment Plan must be submitted in writing to Michael Tennant at the same mailing or e-mail address within 30 days of the publication date of this notice. The Trustees will consider all written comments received during the comment period prior to finalizing the Draft Assessment Plan.

SUPPLEMENTARY INFORMATION: The natural resource damage assessment and restoration (NRDAR) is being conducted jointly by the Trustees pursuant to their respective authorities and responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. §§ 9601 to 9675) and other applicable federal and state laws. The Trustees were designated by the governor of Texas as trustees for natural resources pursuant to Section 107(f)(2)(B) of CERCLA, 42 U.S.C. § 9607(f)(2)(B). Relevant regulations include Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR §§ 300.600 through 300.615) and U.S. Department of the Interior's (DOI's) NRDAR Regulations at 43 CFR Part 11 (DOI NRDAR Regulations), which provide guidance for the NRDAR process under CERCLA.

The U.S. Department of the Navy formerly owned and operated the Naval Weapons Industrial Reserve Plant and Naval Air Station Dallas, located along the northwest shore of Mountain Creek Lake in the City of Dallas, Dallas County, Texas.

Pursuant to 43 CFR Part 11, the Trustees completed a Preassessment Screen and Determination (PAS) in July 2000, which determined that sufficient information was available to proceed with a NRDAR. Specifically, the Trustees have determined that a discharge of oil or a release of a hazardous substance occurred from Naval Air Station Dallas and the Naval Weapons Industrial Reserve Plant; natural resources for which the Trustees may assert trusteeship under CERCLA have been or are likely to have been adversely affected by the release; the quantity and concentration of the discharged oil or released hazardous substance is sufficient to potentially cause injury to natural resources; data sufficient to pursue an assessment are readily available or likely to be obtained at a reasonable cost; and response actions carried out or planned do not or will not sufficiently remedy injury to natural resources without further action.

TRD-202101672

James Murphy

General Counsel

Texas Parks and Wildlife Department

Filed: April 27, 2021

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 46 (2021) is cited as follows: 46 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 “46 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 46 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)

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7 a.m. to 7 p.m., Central Time, Monday through Friday. Subscription cost is \$502 annually for first-class mail delivery and \$340 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7 a.m. to 7 p.m., Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: customer.support@lexisnexis.com

Website: www.lexisnexis.com/printcdsc



LexisNexis