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TEXAS REGISTER

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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 May 5, 2021

Appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2027, Ezio D. Leite of North Richland Hills, Texas (Mr. Leite is being reappointed).

Appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2027, Emily G. Orozco-Crousen of Abilene, Texas (Ms. Orozco-Crousen is being reappointed).

Appointed to the Finance Commission of Texas for a term to expire February 1, 2022, Deborah S. "Debbie" Scanlon of Missouri City, Texas (replacing Margaret M. "Molly" Curl of Richardson, whose resigned).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2023, Patrick Geddes of McKinney, Texas (replacing Jingjing "JJ" Clemence of Sugar Land, who resigned).

Appointed to the State Board for Educator Certification for a term to expire February 1, 2027, Rex W. Gore of Austin, Texas (replacing Kyrsten M. Arbuckle of Austin, who resigned).

Appointments for May 6, 2021

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2027, Yvonne E. Maldonado, D.D.S. of El Paso, Texas (replacing Michael D. "David" Tillman, D.D.S. of Aledo, whose term expired).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2027, Robert G. "Bob" McNeill, D.D.S., M.D. of Dallas, Texas (Dr. McNeill is being reappointed).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2027, Margo Y. Melchor, Ed.D. of Houston, Texas (Dr. Melchor is being reappointed).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2027, Marquita F. Pride of Little Elm, Texas (replacing Rodney Bustamante of Austin, whose term expired).

Appointed as presiding officer of the State Board of Dental Examiners for a term to expire at the pleasure of the Governor, David H. Yu, D.D.S. of Austin (Dr. Yu is replacing Michael D. "David" Tillman, D.D.S. of Aledo).

Appointed to the Texas Woman's University Board of Regents for a term to expire February 1, 2027, Wanda "Janelle" Shepard of Weatherford, Texas (Mr. Shepard is being reappointed).

Appointed to the Texas Woman's University Board of Regents for a term to expire February 1, 2027, Crystal C. Wright, M.D. of Houston, Texas (replacing Carlos L. Gallardo of Frisco, whose term expired).

Appointed to the Texas Department of Housing and Community Affairs for a term to expire January 31, 2025, Kenny E. Marchant of Coppell, Texas (replacing Leslie Bingham Escareño of Brownsville, whose term expired).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2027, Melissa K. Blanding of Driftwood, Texas (replacing Charles B. "Bart" Johnson of Brownwood, whose term expired).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2027, Joseph M. "Joe" Crane of Bay City, Texas (Mr. Crane is being reappointed).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2027, Carol G. Freeman of Llano, Texas (replacing George W. Russell of Marble Falls, whose term expired).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2027, Martha Leigh M. Whitten of San Saba, Texas (Ms. Whitten is being reappointed).

Appointments for May 7, 2021

Appointed to the State Employee Charitable Campaign Policy Committee for a term to expire September 1, 2021, Brent D. Connett of Austin, Texas (replacing Gregory S. "Greg" Davidson of Austin, whose term expired).

Appointed to the State Employee Charitable Campaign Policy Committee for a term to expire September 1, 2022, Alicia G. Key Ellison of Dripping Springs, Texas (Ms. Ellison is being reappointed).

Appointed to the State Employee Charitable Campaign Policy Committee for a term to expire September 1, 2022, Vanessa L.C. Tanner of Austin, Texas (replacing Tabatha C. Vasquez of Manor, whose term expired).

Appointments for May 10, 2021

Appointed to the Texas Holocaust and Genocide Commission for a term to expire February 1, 2025, Lucy Taus Katz of Austin, Texas (replacing Virginica "Virginia" Prodan of Dallas, whose term expired).

Appointed to the Texas Holocaust and Genocide Commission for a term to expire February 1, 2025, Providence Umugwaneza of San Antonio, Texas (replacing Roger P. Naber of Fort Worth, whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2023, Lee Ann Breeding of Denton, Texas (replacing James M. Mosley of Borger, whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2023, Abigail C. "Abby" Brookshire of Midlothian, Texas (Ms. Brookshire is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2023, Elizabeth L. "Libby" Hamilton of Austin, Texas (Ms. Hamilton is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2023, Joan Huffman of Houston, Texas (Senator Huffman is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2023, James White of Hillister, Texas (Representative White is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2023, Erleigh N. Wiley of Forney, Texas (Ms. Wiley is being reappointed).

Appointed to the Texas Historical Commission for a term to expire February 1, 2025, Donna M. Bahorich of Houston, Texas (replacing Wallace B. Jefferson of Austin, whose term expired).

Appointed to the Texas Historical Commission for a term to expire February 1, 2025, James E. "Jim" Bruseth, Ph.D. of Austin, Texas (Dr. Bruseth is being reappointed).

Appointed to the Texas Historical Commission for a term to expire February 1, 2025, John W. Crain of Dallas, Texas (Mr. Crain is being reappointed).

Appointed to the Texas Historical Commission for a term to expire February 1, 2025, Rupa "Renee" Dutia of Dallas, Texas (Ms. Dutia is being reappointed).

Appointed to the Texas Historical Commission for a term to expire February 1, 2025, Gilbert E. "Pete" Peterson, III of Alpine, Texas (Mr. Peterson is being reappointed).

Greg Abbott, Governor
TRD-202101860



Proclamation 41-3815

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

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

WHEREAS, a state of disaster continues to exist in all counties due to COVID-19;

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

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

Pursuant to Section 418.016, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforce-

ment of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 5th day of May, 2021.

Greg Abbott, Governor
TRD-202101861



Proclamation 41-3816

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson counties; and

WHEREAS, the disaster proclamation of August 23, 2017, was subsequently amended on August 26, August 27, August 28, and September 14 to add the following counties to the disaster proclamation: Angelina, Atascosa, Bastrop, Bexar, Brazos, Burleson, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Milam, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Washington, and Willacy; and

WHEREAS, on September 20, 2017, and in each subsequent month effective through today, I issued proclamations renewing the disaster declaration for all counties listed above; and

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

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the 60 counties listed above.

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

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 5th day of May, 2021.

Greg Abbott, Governor
TRD-202101862



Proclamation 41-3817

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that exceptional drought conditions pose a threat of imminent disaster in Andrews, Bailey, Bee, Brewster, Briscoe, Brooks, Cameron, Castro, Cochran, Culberson, Dawson, Deaf Smith, Dickens, Dimmit, Duval, Ector, El Paso, Floyd, Frio, Gaines, Goliad, Hale, Hidalgo, Hockley, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kenedy, King, Lamb, La Salle, Live Oak, Loving, Lubbock, Lynn, Martin, McMullen, Midland, Parmer, Presidio, Randall, Reeves, Starr, Swisher, Terry, Ward, Webb, Willacy, Winkler, Yoakum, Zapata, and Zavala counties.

WHEREAS, significantly low rainfall and prolonged dry conditions continue to increase the threat of wildfire across these portions of the state; and

WHEREAS, these drought conditions pose an imminent threat to public health, property, and the economy;

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

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

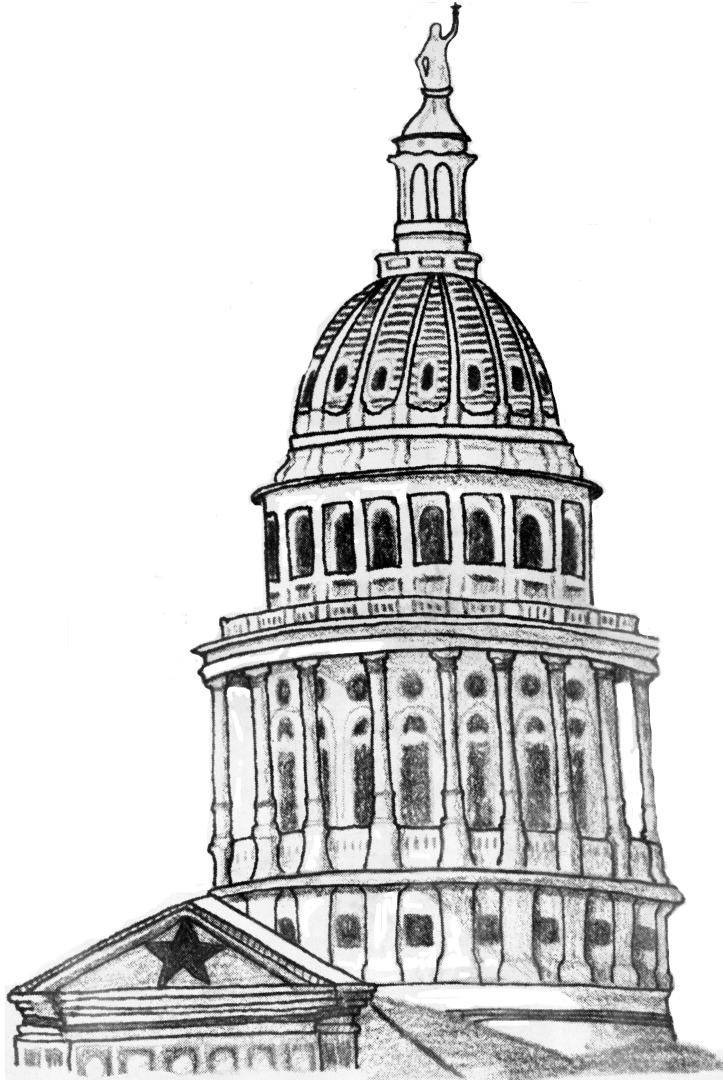
Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 7th day of May, 2021.

Greg Abbott, Governor
TRD-202101863





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>.)

Requests for Opinions

RQ-0405-KP

Requestor:

The Honorable Matthew A. Mills

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

Re: Procedure for numbering election ballots and which officials are authorized to select the method for numbering ballots (RQ-0405-KP)

Briefs requested by June 3, 2021

RQ-0406-KP

Requestor:

The Honorable Russell W. Malm

Midland County Attorney

500 North Loraine, Suite 1103

Midland, Texas 79701

Re: County compliance with competitive bidding procedures before renewing or extending a contract for management of a county facility (RQ-0406-KP)

Briefs requested by June 7, 2021

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

TRD-202101843

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: May 11, 2021



Opinions

Opinion No. KP-0370

The Honorable Luis V. Saenz

Cameron County District Attorney

964 East Harrison Street, Fourth Floor

Brownsville, Texas 78520

Re: Whether section 3000.002 of the Government Code prohibits political subdivisions from adopting paint color and pattern requirements (RQ 0387 KP)

S U M M A R Y

Chapter 3000 of the Government Code governs building regulations a governmental entity may adopt with respect to building products, materials, and methods. Subsection 3000.002(a)(1) prohibits a governmental entity from adopting an ordinance or other regulation that directly or indirectly prohibits or limits the use of products or materials approved for use by certain national model codes. Subsection 3000.002(a)(2) prohibits a governmental entity from establishing standards for building products, materials, or aesthetic methods that exceed the standards in such model codes. Determining whether an ordinance adopting color palette and pattern requirements prohibits or limits, directly or indirectly, a model code approval, or is more stringent than model code standards for building product, material, or aesthetic methods, will likely require investigation into and resolution of fact questions, which is beyond the purview of the opinion process.

Subsections 3000.002(a)(1) and (2) of the Government Code do not apply to the Legislature.

Opinion No. KP-0371

The Honorable M. Brian Evans

Freestone County Attorney

110 South Keechi

Fairfield, Texas 75840

Re: Whether section 81.066 of the Natural Resources Code authorizes the Railroad Commission to address noise generated from oil and gas equipment as part of its annual plan (RQ-0388-KP)

S U M M A R Y

Natural Resources Code section 81.066 requires the Railroad Commission's oil and gas division to develop and publish an Annual Strategic Plan concerning its oil and gas division's monitoring and enforcement activities. Section 81.066 identifies specific information that the Commission's oil and gas division must include in the Annual Plan. Information not identified in section 81.066 need not be included in the Annual Plan.

Under the plain language of section 81.066, absent any monitoring and enforcement activities of the Commission's oil and gas division relating to the control of noise, or any statute or Commission rule concerning

the Commission's control of noise, the Commission is not required to include information on noise control in its Annual Plan.

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

TRD-202101844

Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 11, 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 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 215. STATEWIDE TECHNOLOGY CENTERS FOR DATA AND DISASTER RECOVERY SERVICES SUBCHAPTER B. DATA CENTER SERVICES FOR STATE AGENCIES AND LOCAL GOVERNMENT

1 TAC §215.13

The Texas Department of Information Resources is renewing the effectiveness of emergency amended §215.13 for a 60-day period. The text of the emergency rule was originally published in the February 12, 2021, issue of the *Texas Register* (46 TexReg 989).

Filed with the Office of the Secretary of State on May 6, 2021.

TRD-202101781

Katherine R. Fite

General Counsel

Department of Information Resources

Original effective date: February 2, 2021

Expiration date: July 31, 2021

For further information, please call: (512) 475-4552



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 187. PROCEDURAL RULES SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

22 TAC §187.2, §187.6

The Texas Medical Board is renewing the effectiveness of emergency amended §187.2 and §187.6 for a 60-day period. The text of the emergency rule was originally published in the January 29, 2021, issue of the *Texas Register* (46 TexReg 671).

Filed with the Office of the Secretary of State on May 4, 2021.

TRD-202101755

Scott Freshour

General Counsel

Texas Medical Board

Original effective date: January 14, 2021

Expiration date: July 12, 2021

For further information, please call: (512) 305-7016



SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.16

The Texas Medical Board is renewing the effectiveness of emergency amended §187.16 for a 60-day period. The text of the emergency rule was originally published in the January 29, 2021, issue of the *Texas Register* (46 TexReg 673).

Filed with the Office of the Secretary of State on May 4, 2021.

TRD-202101756

Scott Freshour

General Counsel

Texas Medical Board

Original effective date: January 14, 2021

Expiration date: July 12, 2021

For further information, please call: (512) 305-7016



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 295. OCCUPATIONAL HEALTH SUBCHAPTER C. TEXAS ASBESTOS HEALTH PROTECTION

25 TAC §295.65

The Department of State Health Services is renewing the effectiveness of emergency amended §295.65 for a 60-day period. The text of the emergency rule was originally published in the January 22, 2021, issue of the *Texas Register* (46 TexReg 511).

Filed with the Office of the Secretary of State on May 6, 2021.

TRD-202101782

Nycia Deal
Attorney
Department of State Health Services
Original effective date: January 9, 2021
Expiration date: July 7, 2021
For further information, please call: (512) 834-6608

◆ ◆ ◆
CHAPTER 448. STANDARD OF CARE
SUBCHAPTER I. TREATMENT PROGRAM
SERVICES

25 TAC §448.911

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 25 Texas Administrative Code, Chapter 448, Standard of Care, an amendment to §448.911, concerning an emergency rule in response to COVID-19 to expand a licensed chemical dependency treatment facility's ability to provide treatment services through electronic means to adults and adolescents to reduce the risk of COVID-19 transmission. 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 amendment to Treatment Services Provided by Electronic Means.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule amendment to §448.911(a)(1) to temporarily permit a currently licensed chemical dependency treatment facility (CDTF) to provide treatment services through electronic means to both adult and adolescent clients. This emergency rule amendment will reduce the risk of COVID-19 transmission and expand access to treatment for clients.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §464.009. 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 §464.009 authorizes the Executive Commissioner of HHSC to adopt rules governing organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

The emergency rule amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 464.

§448.911. *Treatment Services Provided by Electronic Means.*

(a) A licensed treatment program may provide outpatient chemical dependency treatment program services by electronic means provided the criteria outlined in this section are addressed.

(1) Services ~~[shall]~~ may be provided to adult and adolescent clients [only]; and

(2) (No change.)

(b) - (x) (No change.)

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 May 6, 2021.

TRD-202101783

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: May 7, 2021

Expiration date: September 3, 2021

For further information, please call: (512) 834-4591

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TITLE 26. HEALTH AND HUMAN SERVICES
PART 1. HEALTH AND HUMAN
SERVICES COMMISSION

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

26 TAC §553.2004

The Health and Human Services Commission is renewing the effectiveness of emergency amended §553.2004 for a 60-day period. The text of the emergency rule was originally published in the January 22, 2021, issue of the *Texas Register* (46 TexReg 513).

Filed with the Office of the Secretary of State on May 10, 2021.

TRD-202101841

Nycia Deal

Attorney

Health and Human Services Commission

Original effective date: January 11, 2021

Expiration date: July 9, 2021

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER CC. COVID-19 EMERGENCY RULE

40 TAC §19.2804

The Texas Department of Licensing and Regulation is renewing the effectiveness of emergency amended §19.2804 for a 60-day

period. The text of the emergency rule was originally published in the January 22, 2021, issue of the *Texas Register* (46 TexReg 514).

Filed with the Office of the Secretary of State on May 10, 2021.

TRD-202101840

Nycia Deal

Attorney

Department of Aging and Disability Services

Original effective date: January 11, 2021

Expiration date: July 9, 2021

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





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 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.505

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.505, relating to Reporting Requirements and the Scarcity Pricing Mechanism in the Electric Reliability Council of Texas Power Region. These proposed amendments will modify the value of the low system-wide offer cap (LCAP) by eliminating a provision that ties the value of LCAP to the natural gas price index and replacing it with a provision that ensures resource entities are able to recover their actual marginal costs in scarcity pricing situations.

GROWTH IMPACT STATEMENT

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

TAKINGS IMPACT ANALYSIS

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Werner Roth, Market Economist, Market Analysis Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

PUBLIC BENEFITS

Mr. Roth has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be more price certainty in scarcity situations while ensuring that resource entities are able to recover their marginal costs. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

LOCAL EMPLOYMENT IMPACT STATEMENT

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

PUBLIC HEARING

The commission staff will conduct a public hearing on this rulemaking on June 10, 2021, if requested in accordance with Texas Government Code §2001.029. In light of the pending public emergency related to the coronavirus disease (COVID-19), this public hearing will be conducted remotely. The request for a public hearing must be received by June 3, 2021. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation

of the hearing prior to the scheduled date for the hearing. If a request for public hearing is received, commission staff will file in this project instructions on how a member of the public can participate in the hearing remotely.

PUBLIC COMMENTS

At the time of this filing, the commission's rules requiring that pleadings or documents be physically filed are suspended. See Project Number 50664, *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Second Order Suspending Rules filed on July 16, 2020. As long as this suspension remains in effect, comments may be filed through the interchange on the commission's website. If the suspension of these rules is lifted during the pendency of this project, comments may be filed by submitting 16 copies to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by June 3, 2021. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 51871.

STATUTORY AUTHORITY

These amendments are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §39.101, which establishes that customers are entitled to safe, reliable, and reasonably priced electricity and gives the commission the authority to adopt and enforce rules to carry out these provisions; and §39.151, which grants the commission oversight and review authority over independent organizations such as ERCOT, directs the commission to adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, and authorizes the commission to delegate to an independent organization such as ERCOT responsibilities for establishing or enforcing such rules.

CROSS REFERENCE TO STATUTES: PURA §14.002, 39.101, and 39.151.

§25.505. *Reporting Requirements and the Scarcity Pricing Mechanism in the Electricity Reliability Council of Texas Power Region.*

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

(g) Scarcity pricing mechanism (SPM). ERCOT will administer the SPM. The SPM will operate as follows:

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

(6) System-Wide Offer Caps.

(A) The low system-wide offer cap (LCAP) will be set at ~~on a daily basis at the greater of:~~ \$2,000 per MWh and \$2,000 per MW per hour.

or
(i) \$2,000 per MWh and \$2,000 per MW per hour;
or
(ii) 50 times the natural gas price index value determined by ERCOT, expressed in dollars per MWh and dollars per MW per hour.

(B) The high system-wide offer cap (HCAP) will be \$9,000 per MWh and \$9,000 per MW per hour.

(C) The system-wide offer cap will be set equal to the HCAP at the beginning of each calendar year and maintained at this level until the peaker net margin during a calendar year exceeds a threshold of three times the cost of new entry of new generation plants.

(D) If the peaker net margin exceeds the threshold established in subparagraph (C) of this paragraph during a calendar year, the system-wide offer cap will be set to the LCAP for the remainder of that calendar year. In this event, ERCOT will continue to apply the operating reserve demand curve and the reliability deployment price adder for the remainder of that calendar year. Energy prices, exclusive of congestion prices, will not exceed the LCAP plus \$1 for the remainder of that calendar year.

(E) The value of the lost load will be equal to the value of the system-wide offer cap in effect.

(7) Reimbursement for Operating Losses During an Event when the LCAP is in Effect. During an event when the system-wide offer cap is set to the LCAP, ERCOT must reimburse resource entities for any actual marginal costs in excess of real-time revenues. ERCOT must utilize existing settlement processes to the extent possible to verify the resource entity's costs for reimbursement.

(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 May 6, 2021.

TRD-202101778

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: June 20, 2021

For further information, please call: (512) 936-7244



TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.223, 535.227 - 535.333

The Texas Real Estate Commission (TREC) proposes amendments to §535.227, Standards of Practice: General Provisions; §535.228, Standards of Practice: Minimum Inspection Requirements for Structural Systems; §535.229, Standards of Practice: Minimum Inspection Requirements for Electrical Systems; §535.330, Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems; §535.331, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems; §535.332, Standards of Practice: Minimum Inspection Requirements for Appliances; §535.333, Standards of Practice: Minimum Inspection Requirements for Optional Systems; and §535.223, Standard Inspection Report

Form, and the form adopted by reference, in Subchapter R of Chapter 535, General Provisions.

The proposed amendments to §535.227 require an inspector to use all reasonable and appropriate tools necessary to comply with the requirements of Standards of Practice and specifies that if an inspector provides services beyond the scope of the Standards of Practice as part of a real estate inspection must be competent to provide those services. Additionally, the proposed amendments to §535.227 clarify that an inspector cannot perform an inspection for a client until they have notified the client of any systems or components the inspector does not routinely inspect that are otherwise required by the Standards of Practice. Finally, the proposed amendments to §535.227 include a new definition for "gas distribution system" to conform to changes made by proposed amendments to §535.331, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

The proposed amendments to §535.228 update requirements for garage doors to better reflect current building code requirements and clarify reporting requirements for gas fixtures and appliance listed under this section to conform to changes made by proposed amendments to §535.331, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

The proposed amendments to §535.229 update the requirements for electrical systems to better reflect current building code requirements.

The proposed amendments to §535.330 clarify what an inspector is required to do and report when determining if a HVAC system is functioning properly. The proposed amendments to §535.330 also clarify reporting requirements for gas fixtures and appliance listed under this section to conform to changes made by proposed amendments to §535.331, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

The proposed amendments to §535.331 require an inspector to report the material used for water supply lines, water drain lines, and the gas distribution system, specify that certain items are required to be reported when only when visible, and require an inspector to report water pressure exceeding 80 PSI. The proposed amendments to §535.331 move the requirements related the inspection of a gas distribution system that are currently contained in various other sections of the Standards of Practice to a new subsection (d) of this section and clarify reporting requirements for gas fixtures and appliance listed under this section to conform to the new subsection (d).

The proposed amendments to §535.332 move the general exception to the requirements of this section to the end of the rule to mirror other sections of the Standards of Practice. The proposed amendments to §535.332 also update the requirements for bathroom ventilation to better reflect current building code requirements, specify that certain items are required to be reported when only when visible, and clarify the reporting requirements for gas fixtures and appliance listed under this section to conform to changes made by proposed amendments to §535.331, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

The proposed amendments to §535.333 add an optional reporting requirement for built-in appliances, specify that an inspector is not required to report on the performance of an underground zone of a sprinkler system, and clarify that private sewage system is not limited to a septic system.

The proposed amendments to §535.223 and the form adopted by reference clarify the requirement when an inspector uses computer software or other means to produce an inspection report to ensure that it complies with established reporting requirements.

The Texas Real Estate Inspector Committee recommends the proposed amendments.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendment. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the sections as proposed is in effect, the public benefit anticipated as a result of the change is improved clarity for license holders and greater consumer protection.

For each year of the first five years the proposed amendments are in effect, the amendment will technically expand an existing regulation by requiring the consent to be in writing, but will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, via email to general.counsel@trec.texas.gov, or through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.223. Standard Inspection Report Form.

The Commission adopts by reference Property Inspection Report Form REI 7-6 [7-5], approved by the Commission for use in reporting inspections results. This document is published by and available from the

Commission website: www.trec.texas.gov, or by writing to the Commission at Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of substantially complete one-to-four family residential property shall be reported on Form REI 7-6 [7-5] adopted by the Commission ("the standard form").

(2) ~~[Inspectors may reproduce the standard form by computer or from printed copies obtained from the Commission. Except as specifically permitted by this section,] If an inspector uses computer software or other means to produce an inspection report, the inspector must [shall] reproduce the text of the standard form verbatim and the spacing, borders and placement of text [on the page] must [appear to] be identical to [that in the printed version of] the standard form.~~

(3) An inspector may make the following changes to the standard form:

(A) delete the line for name and license number, of the sponsoring inspector, if the inspection was performed solely by a professional inspector;

(B) change the typeface; provided that it is no smaller than a 10 point font;

(C) change the color of the typeface and checkboxes;

(D) use legal sized (8-1/2" by 14") paper;

(E) add a cover page to the report form;

(F) add footers to each page of the report except the first page and may add headers to each page of the report;

(G) place the property identification and page number at either the top or bottom of the page;

(H) add subheadings under items, provided that the numbering of the standard items remains consistent with the standard form;

(I) list other items in the corresponding appropriate section of the report form and additional captions, letters, and check boxes for those items;

(J) delete inapplicable subsections of Section VI., Optional Systems, and re-letter any remaining subsections;

(K) delete Subsection L., Other, of Section I., Structural Systems; Subsection E., Other of Section IV, Plumbing Supply, Distribution Systems and Fixtures and Subsection I., Other of Section V., Appliances;

(L) as the inspector deems necessary:

(i) allocate such space for comments in:

(I) the "Additional Information Provided by the Inspector" section; and

(II) each section provided for comments for each inspected item;

(ii) attach additional pages of comments; or

(iii) both;

(M) include a service agreement/inspection contract or contractual terms between the inspector and a client with the standard form under the "Additional Information Provided by the Inspector" section or as an attachment to the standard form;

(N) attach additional pages to the form if:

(i) it is necessary to report the inspection of a component, or system not contained in the standard form; or

(ii) the space provided on the form is inadequate for a complete reporting of the Inspection; ~~and]~~

(O) attach additional reporting information produced by computer software so long as the standard report form is provided before that information; and

(P) [(O)] Remove the Commission's logo or substitute the inspector's logo in place of the Commission's logo.

(4) The inspector shall renumber the pages of the standard form to correspond with any changes made necessary due to adjusting the space for comments or adding additional items and shall number all pages of the report, including any addenda.

(5) The inspector shall indicate, by checking the appropriate boxes on the form, whether each item was inspected, not inspected, not present, or deficient and explain the findings in the corresponding section in the body of the report form.

(6) This section does not apply to the following:

(A) re-inspections of a property performed for the same client;

(B) inspections performed for or required by a lender or governmental agency;

(C) inspections for which federal or state law requires use of a different report;

(D) quality control construction inspections of new homes performed for builders, including phased construction inspections, inspections performed solely to determine compliance with building codes, warranty or underwriting requirements, or inspections required by a municipality and the builder or other entity requires use of a different report, and the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a builder or other entity in accordance with the builder's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspections performed by a license holder and reported on Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase." If a report form required for use by the builder or builder's employee does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector;

(E) an inspection of a building or addition that is not substantially complete; or

(F) inspections of a single system or component as outlined in clause (ii) of this subparagraph, provided that the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a buyer or seller in accordance with the client's requirements. The report addresses a single system or component and is not intended as a substitute for a complete standard inspection of the property. Standard inspections performed by a license holder and reported on a Commission promulgated report form may contain additional information a buyer should consider in making a decision to purchase."

(i) If the client requires the use of a report form that does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector.

(ii) An inspection is considered to be of a single system or component if the inspection only addresses one of the following or a portion thereof:

- (I) foundation;
- (II) framing/structure, as outlined in §535.213(e)(2) of this title;
- (III) building enclosure;
- (IV) roof system;
- (V) plumbing system;
- (VI) electrical system;
- (VII) HVAC system;
- (VIII) a single appliance; or
- (IX) a single optional system as stated in the Standards of Practice.

§535.227. *Standards of Practice: General Provisions.*

(a) Scope.

(1) These standards of practice apply when a professional inspector or real estate inspector who is licensed under this chapter accepts employment to perform a real estate inspection for a prospective buyer or seller of real property.

(2) These standards of practice define the minimum requirements for a real estate inspection conducted on a one to four family unit that is substantially completed. Substantially completed means the stage of construction when a new building, addition, improvement, or alteration to an existing building can be occupied or used for its intended purpose.

(3) For the purposes of these standards of practice a real estate inspection:

(A) is a limited visual survey and basic performance evaluation of the systems and components of a building using normal controls that provides information regarding the general condition of a residence at the time of inspection.

(B) is not intended to be a comprehensive investigation or exploratory probe to determine the cause or effect of deficiencies noted by the inspector; and

(C) requires the use of reasonable and appropriate tools to satisfy the requirements of the standards of practice. However an inspection does not require the use of:

(i) specialized equipment, including but not limited to:

- (I) thermal imaging equipment;
- (II) moisture meters;
- (III) gas or carbon monoxide detection equipment;
- (IV) environmental testing equipment and devices;
- (V) elevation determination devices; [ø]
- (VI) ladders capable of reaching surfaces over one story above ground surfaces; or
- (VII) cameras or other tools used to inspect the interior of a drain or sewer line;

(VIII) drones; or

(ii) specialized procedures, including but not limited to:

- (I) environmental testing;
- (II) elevation measurement;
- (III) calculations; or
- (IV) any method employing destructive testing that damages otherwise sound materials or finishes.

(4) These standards of practice do not prohibit an inspector from providing a higher level of inspection performance than required by these standards of practice or from inspecting components and systems in addition to those listed under the standards of practice. If an inspector provides services beyond the scope required by these standards of practice, including the use of specialized equipment, or inspects components and systems in addition to those listed under the standards of practice, the inspector must possess the competency required to do so.

(b) Definitions.

(1) Accessible--In the reasonable judgment of the inspector, capable of being approached, entered, or viewed without:

- (A) hazard to the inspector;
- (B) having to climb over obstacles, moving furnishings or large, heavy, or fragile objects;
- (C) using specialized equipment or procedures;
- (D) disassembling items other than covers or panels intended to be removed for inspection;
- (E) damaging property, permanent construction or building finish; or
- (F) using a ladder for portions of the inspection other than the roof or attic space.

(2) Chapter 1102--Texas Occupations Code, Chapter 1102.

(3) Component--A part of a system.

(4) Cosmetic--Related only to appearance or aesthetics, and not related to performance, operability, or water penetration.

(5) Deficiency--In the reasonable judgment of the inspector, a condition that:

- (A) adversely and materially affects the performance of a system, or component; or
- (B) constitutes a hazard to life, limb, or property as specified by these standards of practice.

(6) Deficient--Reported as having one or more deficiencies.

(7) Gas distribution system--all gas lines between the point of delivery and appliance shutoff valves.

(A) The point of delivery for a natural gas system is:

- (i) the outlet of the service meter assembly;
- (ii) the outlet of the service regulator; or
- (iii) the service shut valve where a meter is not provided. Where a system shutoff valve is provided after the outlet of the service meter assembly, such valve shall be considered to be downstream of the point of delivery.

(B) The point of delivery for undiluted liquefied petroleum gas systems is outlet of the service pressure regulator, exclusive of line gas regulators, in the system.

(8) [(7)] Inspect--To operate in normal ranges using ordinary controls at typical settings, look at and examine accessible systems or components and report observed deficiencies as specified by these standards of practice.

(9) [(8)] Performance--Achievement of an operation, function or configuration relative to accepted industry standard practices with consideration of age and normal wear and tear from ordinary use.

(10) [(9)] Report--To provide the inspector's opinions and findings regarding systems and components required by the standards of practice [on the standard inspection report form as required by §535.222 and §535.223 of this title].

(11) [(10)] Standards of practice--§§535.227 - 535.233 of this title.

(c) General Requirements. The inspector shall:

(1) operate fixed or installed equipment and appliances listed herein in at least one mode with ordinary controls at typical settings;

(2) visually inspect accessible systems or components from near proximity to the systems and components, and from the interior of the attic and crawl spaces; and

(3) complete the standard inspection report form as required by §535.222 and §535.223 of this title.

(d) General limitations. The inspector is not required to:

(1) inspect:

(A) items other than those listed within these standards of practice;

(B) elevators;

(C) detached buildings, decks, docks, fences, waterfront structures, or related equipment;

(D) anything buried, hidden, latent, or concealed;

(E) sub-surface drainage systems;

(F) automated or programmable control systems, automatic shut-off, photoelectric sensors, timers, clocks, metering devices, signal lights, lightning arrestor system, remote controls, security or data distribution systems, solar panels or smart home automation components; or

(G) concrete flatwork such as driveways, sidewalks, walkways, paving stones or patios;

(2) report:

(A) past repairs that appear to be effective and workmanlike except as specifically required by these standards;

(B) cosmetic or aesthetic conditions; or

(C) wear and tear from ordinary use;

(3) determine:

(A) the presence or absence of pests, termites, or other wood-destroying insects or organisms;

(B) the presence, absence, or risk of:

(i) asbestos;

(ii) lead-based paint;

(iii) mold, mildew;

(iv) corrosive or contaminated drywall "Chinese Drywall"; or

(v) any other environmental hazard, environmental pathogen, carcinogen, toxin, mycotoxin, pollutant, fungal presence or activity, or poison;

(C) types of wood or preservative treatment and fastener compatibility; or

(D) the cause or source of a condition;

(E) the cause or effect of deficiencies;

(F) any of the following issues concerning a system or component:

(i) insurability or warrantability;

(ii) suitability, adequacy, compatibility, capacity, reliability, marketability, or operating costs;

(iii) recalls, counterfeit products, or product lawsuits;

(iv) life expectancy or age;

(v) energy efficiency, vapor barriers, or thermostatic performance;

(vi) compliance with any code, listing, testing or protocol authority;

(vii) utility sources; or

(viii) manufacturer or regulatory requirements, except as specifically required by these standards;

(4) anticipate future events or conditions, including but not limited to:

(A) decay, deterioration, or damage that may occur after the inspection;

(B) deficiencies from abuse, misuse or lack of use;

(C) changes in performance of any component or system due to changes in use or occupancy;

(D) the consequences of the inspection or its effects on current or future buyers and sellers;

(E) common household accidents, personal injury, or death;

(F) the presence of water penetrations; or

(G) future performance of any item;

(5) operate shut-off, safety, stop, pressure or pressure-regulating valves or items requiring the use of codes, keys, combinations, or similar devices;

(6) designate conditions as safe;

(7) recommend or provide engineering, architectural, appraisal, mitigation, physical surveying, realty, or other specialist services;

(8) review historical records, installation instructions, repair plans, cost estimates, disclosure documents, or other reports;

(9) verify sizing, efficiency, or adequacy of the ground surface drainage system;

- (10) verify sizing, efficiency, or adequacy of the gutter and downspout system;
- (11) operate recirculation or sump pumps;
- (12) remedy conditions preventing inspection of any item;
- (13) apply open flame or light a pilot to operate any appliance;
- (14) turn on decommissioned equipment, systems or utility services; or
- (15) provide repair cost estimates, recommendations, or re-inspection services.

(e) In the event of a conflict between the general provisions set out in this section, and the specific provisions specified elsewhere in the standards of practice, specific provisions shall take precedence.

(f) Departure provision.

(1) An inspector may depart from the inspection of a component or system required by the standards of practice only if:

- (A) the inspector and client agree the item is not to be inspected;
- (B) the inspector is not qualified to inspect the item;
- (C) in the reasonable judgment of the inspector, the inspector determines that:
 - (i) conditions exist that prevent inspection of an item;
 - (ii) conditions or materials are hazardous to the health or safety of the inspector; or
 - (iii) the actions of the inspector may cause damage to the property; or
- (D) the item is a common element of a multi-family development and is not in physical contact with the unit being inspected, such as the foundation under another building or a part of the foundation under another unit in the same building;

(2) If an inspector departs from the inspection of a component or system required by the standards of practice, the inspector shall:

- (A) notify the client at the earliest practical opportunity that the component or system will not be inspected; and
- (B) make an appropriate notation on the inspection report form, stating the reason the component or system was not inspected.

(3) If the inspector routinely departs from inspection of a component or system required by the standards of practice, and the inspector has reason to believe that the property being inspected includes that component or system, the inspector shall not perform the inspection of the property until [the earliest practical opportunity for the notice required by this subsection is the first contact] the inspector notifies the client, or [makes with] the prospective client, that the component or system will not be inspected.

(g) Enforcement. Failure to comply with the standards of practice is grounds for disciplinary action as prescribed by Chapter 1102.

§535.228. *Standards of Practice: Minimum Inspection Requirements for Structural Systems.*

(a) Foundations.

(1) The inspector shall:

(A) render a written opinion as to the performance of the foundation; and

(B) report:

- (i) the type of foundations;
- (ii) the vantage point from which the crawl space was inspected;

(C) generally report present and visible indications used to render the opinion of adverse performance, such as:

- (i) binding, out-of-square, non-latching doors;
- (ii) framing or frieze board separations;
- (iii) sloping floors;
- (iv) window, wall, floor, or ceiling cracks or separations; and
- (v) rotating, buckling, cracking, or deflecting masonry cladding.

(D) report as Deficient:

- (i) deteriorated materials;
- (ii) deficiencies in foundation components such as; beams, joists, bridging, blocking, piers, posts, pilings, columns, sills or subfloor;
- (iii) deficiencies in retaining walls related to foundation performance;
- (iv) exposed or damaged reinforcement;
- (v) crawl space ventilation that is not performing; and
- (vi) crawl space drainage that is not performing.

(2) The inspector is not required to:

- (A) enter a crawl space or any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high;
- (B) provide an exhaustive list of indicators of possible adverse performance; or
- (C) inspect retaining walls not related to foundation performance.

(b) Grading and drainage.

(1) The inspector shall report as Deficient:

- (A) drainage around the foundation that is not performing;
- (B) deficiencies in grade levels around the foundation; and
- (C) deficiencies in installed gutter and downspout systems.

(2) The inspector is not required to:

- (A) inspect flatwork or detention/retention ponds (except as related to slope and drainage);
- (B) determine area hydrology or the presence of underground water; or
- (C) determine the efficiency or performance of underground or surface drainage systems.

- (c) Roof covering materials.
 - (1) The inspector shall:
 - (A) inspect the roof covering materials from the surface of the roof;
 - (B) report:
 - (i) type of roof coverings;
 - (ii) vantage point from where the roof was inspected;
 - (iii) evidence of water penetration;
 - (iv) evidence of previous repairs to the roof covering material, flashing details, skylights and other roof penetrations; and
 - (C) report as Deficient deficiencies in:
 - (i) fasteners;
 - (ii) adhesion;
 - (iii) roof covering materials;
 - (iv) flashing details;
 - (v) skylights; and
 - (vi) other roof penetrations.
 - (2) The inspector is not required to:
 - (A) inspect the roof from the roof level if, in the inspector's reasonable judgment:
 - (i) the inspector cannot safely reach or stay on the roof; or
 - (ii) significant damage to the roof covering materials may result from walking on the roof;
 - (B) determine:
 - (i) the remaining life expectancy of the roof covering; or
 - (ii) the number of layers of roof covering material;
 - (C) identify latent hail damage;
 - (D) exhaustively examine all fasteners and adhesion, or
 - (E) provide an exhaustive list of locations of deficiencies and water penetrations.

- (d) Roof structures and attics.
 - (1) The inspector shall:
 - (A) report:
 - (i) the vantage point from which the attic space was inspected;
 - (ii) approximate average depth of attic insulation;
 - (iii) evidence of water penetration;
 - (B) report as Deficient:
 - (i) attic space ventilation that is not performing;
 - (ii) deflections or depressions in the roof surface as related to adverse performance of the framing and decking;
 - (iii) missing insulation;
 - (iv) deficiencies in:

- (I) installed framing members and decking;
- (II) attic access ladders and access openings; and
- (III) attic ventilators.
- (2) The inspector is not required to:
 - (A) enter attics or unfinished spaces where openings are less than 22 inches by 30 inches or headroom is less than 30 inches;
 - (B) operate powered ventilators; or
 - (C) provide an exhaustive list of locations of deficiencies and water penetrations.
- (e) Interior walls, ceilings, floors, and doors.
 - (1) The inspector shall:
 - (A) report evidence of water penetration;
 - (B) report as Deficient:
 - (i) deficiencies in the condition and performance of doors and hardware;
 - (ii) deficiencies related to structural performance or water penetration; and
 - (iii) the absence of or deficiencies in fire separation between the garage and the living space and between the garage and its attic.
 - (2) The inspector is not required to:
 - (A) report cosmetic damage or the condition of floor, wall, or ceiling coverings; paints, stains, or other surface coatings; cabinets; or countertops, or
 - (B) provide an exhaustive list of locations of deficiencies and water penetrations.
- (f) Exterior walls, doors, and windows.
 - (1) The inspector shall:
 - (A) report evidence of water penetration;
 - (B) report as Deficient:
 - (i) the absence of performing emergency escape and rescue openings in all sleeping rooms;
 - (ii) an attached garage that is not equipped with self-closing or automatic closing devices; [a solid wood door less than 1-3/8 inches in thickness; a solid or honeycomb core steel door less than 1-3/8 inches thick, or a 20-minute fire-rated door between the residence and an attached garage;]
 - (iii) a door between the residence and an attached garage that is:
 - (I) a solid wood door less than 1-3/8 inches thick;
 - (II) solid honeycomb core steel door less than 1-3/8 inches thick; or
 - (III) not a 20-minute fire-rated door;
 - (iv) [(iii)] missing or damaged screens;
 - (v) [(iv)] deficiencies related to structural performance or water penetration;
 - (vi) [(v)] deficiencies in:
 - (I) weather stripping, gaskets or other air barrier materials;

- (II) claddings;
- (III) water resistant materials and coatings;
- (IV) flashing details and terminations;
- (V) the condition and performance of exterior doors, garage doors and hardware; and
- (VI) the condition and performance of windows and components.

(2) The inspector is not required to:

- (A) report the condition of awnings, blinds, shutters, security devices, or other non-structural systems;
- (B) determine the cosmetic condition of paints, stains, or other surface coatings; or
- (C) operate a lock if the key is not available.
- (D) provide an exhaustive list of locations of deficiencies and water penetrations.

(g) Exterior and interior glazing.

(1) The inspector shall report as Deficient:

- (A) insulated windows that are obviously fogged or display other evidence of broken seals;
- (B) deficiencies in glazing, weather stripping and glazing compound in windows and doors; ~~and~~
- (C) the absence of safety glass in hazardous locations; and[-]

(D) the absence of fall protection at windows that are located less than 24 inches from the finished floor and greater than 72 inches from the finished grade.

(2) The inspector is not required to:

- (A) exhaustively inspect insulated windows for evidence of broken seals;
- (B) exhaustively inspect glazing for identifying labels; or
- (C) identify specific locations of damage.

(h) Interior and exterior stairways.

(1) The inspector shall report as Deficient:

- (A) spacing between intermediate balusters, spindles, or rails for steps, stairways, guards, and railings that permit passage of an object greater than 4 inches in diameter, except that on the open side of the staircase treads, spheres less than 4-3/8 inches in diameter may pass through the guard rail balusters or spindles; and
- (B) deficiencies in steps, stairways, landings, guardrails, and handrails.

(2) The inspector is not required to exhaustively measure every stairway component.

(i) Fireplaces and chimneys.

(1) The inspector shall report as Deficient:

- (A) built-up creosote in accessible areas of the firebox and flue;
- (B) the presence of combustible materials in near proximity to the firebox opening;

(C) the absence of fireblocking at the attic penetration of the chimney flue, where accessible; and

(D) deficiencies in the:

- (i) damper;
- (ii) lintel, hearth, hearth extension, and firebox;
- (iii) [gas valve and location] gas fixture installed in the fireplace not associated with the gas distribution system;
- (iv) circulating fan;
- (v) combustion air vents; and
- (vi) chimney structure, termination, coping, crown, caps, and spark arrestor.

(2) The inspector is not required to:

- (A) verify the integrity of the flue;
- (B) perform a chimney smoke test; or
- (C) determine the adequacy of the draft.

(j) Porches, Balconies, Decks, and Carports.

(1) The inspector shall:

- (A) inspect:
 - (i) attached balconies, carports, and porches;
 - (ii) abutting porches, decks, and balconies that are used for ingress and egress; and
- (B) report as Deficient:
 - (i) on decks 30 inches or higher above the adjacent grade, spacings between intermediate balusters, spindles, or rails that permit passage of an object greater than four inches in diameter; and
 - (ii) deficiencies in accessible components.

(2) The inspector is not required to:

- (A) exhaustively measure every porch, balcony, deck, or attached carport components; or
- (B) enter any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high.

§535.229. Standards of Practice: Minimum Inspection Requirements for Electrical Systems.

(a) Service entrance and panels.

(1) The inspector shall report as Deficient:

- (A) a drop, weatherhead or mast that is not securely fastened to the building;
- (B) the absence of or deficiencies in the grounding electrode system;
- (C) missing or damaged dead fronts or covers plates;
- (D) conductors not protected from the edges of electrical cabinets, gutters, or cutout boxes;
- (E) electrical cabinets and panel boards not appropriate for their location; such as a clothes closet, bathrooms or where they are exposed to physical damage;
- (F) electrical cabinets and panel boards that are not accessible or do not have a minimum of 36-inches of clearance in front of them;

- (G) deficiencies in:
- (i) electrical cabinets, gutters, cutout boxes, and panel boards;
 - (ii) the insulation of the service entrance conductors, drip loop, separation of conductors at weatherheads, and clearances;
 - (iii) the compatibility of overcurrent devices and conductors;
 - (iv) the overcurrent device and circuit for labeled and listed 250 [240] volt appliances;
 - (v) bonding and grounding;
 - (vi) conductors;
 - (vii) the operation of installed ground-fault or arc-fault circuit interrupter devices; and
- (H) the absence of:
- (i) trip ties on 250 [240] volt overcurrent devices or multi-wire branch circuit;
 - (ii) appropriate connections;
 - (iii) anti-oxidants on aluminum conductor terminations;
 - (iv) main disconnecting means; and.

(2) The inspector is not required to:

- (A) determine present or future sufficiency of service capacity amperage, voltage, or the capacity of the electrical system;
- ~~[(B) test arc-fault circuit interrupter devices when the property is occupied or damage to personal property may result, in the inspector's reasonable judgment;]~~
- ~~[(B) [(C)] conduct voltage drop calculations;~~
- ~~[(C) [(D)] determine the accuracy of overcurrent device labeling;~~
- ~~[(D) [(E)] remove covers where hazardous as judged by the inspector;~~
- ~~[(E) [(F)] verify the effectiveness of overcurrent devices; or~~
- ~~[(F) [(G)] operate overcurrent devices.~~

(b) Branch circuits, connected devices, and fixtures.

(1) The inspector shall:

- (A) manually test the installed and accessible smoke and carbon monoxide alarms;
- (B) report the type of branch circuit conductors;
- (C) report as Deficient:
 - (i) the absence of ground-fault circuit interrupter protection in all:
 - (I) bathroom receptacles;
 - (II) garage and accessory building receptacles;
 - (III) outdoor receptacles;
 - (IV) crawl space receptacles and lighting outlets;
 - (V) ~~unfinished~~ basement receptacles;
 - (VI) kitchen countertop receptacles; and

- (VII) receptacles that are located within six feet of the outside edge of a sink, shower, or bathtub;
- ~~[(VIII) laundry area receptacles;~~
- ~~[(IX) indoor damp and wet location receptacle;~~
- ~~[(X) kitchen dishwasher receptacle; and~~
- ~~[(XI) electrically heated floors;~~
- (ii) arc-fault protection in the following locations:
 - ~~[(I) kitchens;~~
 - ~~[(II) family rooms;~~
 - ~~[(III) dining rooms;~~
 - ~~[(IV) living rooms;~~
 - ~~[(V) parlors;~~
 - ~~[(VI) libraries;~~
 - ~~[(VII) dens;~~
 - ~~[(VIII) bedrooms;~~
 - ~~[(IX) sunrooms;~~
 - ~~[(X) recreation rooms;~~
 - ~~[(XI) closets;~~
 - ~~[(XII) hallways; and~~
 - ~~[(XIII) laundry area;~~
- ~~[(iii) [(ii)] the failure of operation of ground-fault circuit interrupter protection devices;~~
- ~~[(iv) [(iii)] missing or damaged receptacle, switch or junction box covers;~~
- ~~[(v) [(iv)] the absence of:~~
 - ~~[(I) equipment disconnects;~~
 - ~~[(II) appropriate connections, such as copper/aluminum approved devices, if branch circuit aluminum conductors are discovered in the main or sub-panel based on a random sampling of accessible receptacles and switches;~~
- ~~[(vi) [(v)] the absence of tamper-resistant receptacles less than five and a half feet above the floor;~~
- (vii) deficiencies in 125 volt receptacles by determining the:
 - ~~[(I) presence of power;~~
 - ~~[(II) correct polarity; and~~
 - ~~[(III) presence of grounding;~~
- (viii) deficiencies in 250 volt receptacles by determining the presence of power;
 - ~~[(II) switches;~~
 - ~~[(III) bonding or grounding;~~
 - ~~[(IV) wiring, wiring terminations, junction boxes, devices, and fixtures, including improper location;~~
 - ~~[(V) doorbell and chime components;~~
 - ~~[(VI) smoke and carbon monoxide alarms;~~
- ~~[(ix) [(vii)] improper use of extension cords;~~

(x) ~~[(vii)]~~ deficiencies in or absences of conduit, where applicable; and

(xi) ~~[(viii)]~~ the absence of smoke alarms:

(I) in each sleeping room;

(II) outside each separate sleeping area in the immediate vicinity of the sleeping rooms; ~~[and]~~

(III) in the living space of each story of the dwelling; and

(xii) the absence of carbon monoxide alarms outside each separate sleeping area in the immediate vicinity of the sleeping rooms when either of the following conditions exist:

(I) fuel fired appliance are installed in the dwelling; or

(II) an attached garage with an opening into the dwelling unit.

(2) The inspector is not required to:

(A) inspect low voltage wiring;

(B) disassemble mechanical appliances;

(C) verify the effectiveness of smoke alarms;

(D) verify interconnectivity of smoke alarms;

(E) activate smoke or carbon monoxide alarms that are or may be monitored or require the use of codes;

(F) verify that smoke alarms are suitable for the hearing-impaired; ~~[or]~~

(G) remove the covers of junction, fixture, receptacle or switch boxes unless specifically required by these standards; or ~~[-]~~

(H) test arc-fault circuit interrupter devices when the property is occupied or damage to personal property may result, in the inspector's reasonable judgment.

§535.230. *Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems.*

(a) Heating equipment.

(1) General requirements.

(A) The inspector shall report:

(i) the type of heating systems; and

(ii) the energy sources; and

(B) report as Deficient:

(i) inoperative units;

(ii) deficiencies in the thermostats;

(iii) inappropriate location;

(iv) the lack of protection from physical damage;

(v) burners, burner ignition devices or heating elements, switches, and thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(vi) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(vii) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement; and

(viii) deficiencies in mounting and performance of window and wall units;

(2) Requirements for electric units. The inspector shall report deficiencies in:

(A) performance of heat pumps;

(B) performance of heating elements; and

(C) condition of conductors; and

(3) Requirements for gas units. The inspector shall report as Deficient:

(A) gas leaks in the heating equipment not associated with the gas distribution system;

(B) flame impingement, uplifting flame, improper flame color, or excessive scale buildup;

~~[(C) the absence of a gas shut-off valve within six feet of the appliance;]~~

~~[(D) the absence of a gas appliance connector or one that exceeds six feet in length;]~~

~~[(E) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings; and]~~

(C) [(F)] deficiencies in:

(i) combustion, and dilution air;

~~[(ii) gas shut-off valves;]~~

~~[(iii) access to a gas shutoff valves that prohibits full operation;]~~

~~[(iv) gas appliance connector materials; and]~~

(ii) [(+)] the vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances; and

(b) Cooling equipment.

(1) Requirements for cooling units other than evaporative coolers.

(A) the inspector shall: ~~[report;]~~

(i) report the type of systems;

(ii) measure and report the temperature difference between the supply air and the returned air or report industry-accepted method used to determine performance; and

(iii) generally report extraneous factors or conditions, present on the day of the inspection, that would adversely impact the temperature differential of an otherwise performing unit; and

(B) the inspector shall report as Deficient:

(i) inoperative units;

(ii) deficiencies in the performance of the cooling system that: [inadequate cooling as demonstrated by its performance;]

(I) fails to achieve a 15 degrees Fahrenheit to 22 degrees Fahrenheit temperature differential; or

(II) fails to cool adequately as determined by other industry-accepted methods;

(iii) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(iv) when applicable; a flooded passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(v) noticeable vibration of blowers or fans;

(vi) water in the auxiliary/secondary drain pan;

(vii) a primary drain pipe that discharges in a sewer vent;

(viii) missing or deficient refrigerant pipe insulation;

(ix) dirty coils, where accessible;

(x) condensing units lacking adequate clearances or air circulation or that has deficiencies in the fins, location, levelness, or elevation above grade surfaces;

(xi) deficiencies in:

(I) the condensate drain and auxiliary/secondary pan and drain system;

(II) mounting and performance of window or wall units; and

(III) thermostats.

(2) Requirements for evaporative coolers.

(A) The inspector shall report:

(i) type of systems;

(ii) the type of water supply line;

(B) The inspector shall report as Deficient:

(i) inoperative units;

(ii) inadequate access and clearances;

(iii) deficiencies in performance or mounting;

(iv) missing or damaged components;

(v) the presence of active water leaks; and

(vi) the absence of backflow prevention.

(c) Duct systems, chases, and vents.

(1) The inspector shall report as Deficient:

(A) damaged duct systems or improper material;

(B) damaged or missing duct insulation;

(C) the absence of air flow at accessible supply registers;

(D) the presence of gas piping and sewer vents concealed in ducts, plenums and chases;

(E) ducts or plenums in contact with earth; and

(2) The inspector shall report as Deficient deficiencies in:

(A) filters;

(B) grills or registers; and

(C) the location of return air openings.

(d) For heating, ventilation, and air conditioning systems inspected under this section, the inspector is not required to perform the following actions:

(1) program digital thermostats or controls;

(2) inspect:

(A) for pressure of the system refrigerant, type of refrigerant, or refrigerant leaks;

(B) winterized or decommissioned equipment; or

(C) duct fans, humidifiers, dehumidifiers, air purifiers, motorized dampers, electronic air filters, multi-stage controllers, sequencers, heat reclaimers, wood burning stoves, boilers, oil-fired units, supplemental heating appliances, de-icing provisions, or reversing valves;

(3) operate:

(A) setback features on thermostats or controls;

~~(B) cooling equipment when the outdoor temperature is less than 60 degrees Fahrenheit;~~

(B) ~~(C)~~ radiant heaters, steam heat systems, or unvented gas-fired heating appliances; or

(C) cooling or heating systems when weather conditions or other circumstances may cause equipment damage, including:

(i) cooling equipment when the outdoor temperature is less than 60 degrees Fahrenheit; and

(ii) ~~(D)~~ heat pumps, in the heat pump mode, when the outdoor temperature is above 70 degrees Fahrenheit;

(4) verify:

(A) compatibility of components;

(B) tonnage and manufacturer match of indoor coils and outside coils or condensing units;

(C) the accuracy of thermostats; or

(D) the integrity of the heat exchanger; or

(5) determine:

(A) sizing, efficiency, or adequacy of the system;

(B) balanced air flow of the conditioned air to the various parts of the building; or

(C) types of materials contained in insulation.

§535.231. *Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.*

(a) Plumbing systems.

(1) The inspector shall:

(A) report:

(i) location of water meter;

(ii) location of homeowners main water supply shut-off valve; and

(iii) static water pressure;

(iv) visible material used for water supply lines and drain lines;

(B) report as Deficient:

(i) the presence of active leaks;

- (ii) water pressure exceeding 80 PSI;
- (iii) [(~~ii~~)] the lack of a pressure reducing valve when the water pressure exceeds 80 PSI;
- (iv) [(~~iii~~)] the lack of a visible [~~an~~] expansion tank [at the water heater(s)] when a pressure reducing valve, check valve, or backflow preventer is in place at the water supply line/system;
- (v) [(~~iv~~)] the absence of:
 - (I) fixture shut-off valves;
 - (II) dielectric unions, when applicable;
 - (III) back-flow devices, anti-siphon devices, or air gaps at the flow end of fixtures; and
- (vi) [(~~v~~)] deficiencies in:
 - (I) water supply pipes and waste pipes;
 - (II) the installation and termination of the vent system;
 - (III) the performance of fixtures and faucets not connected to an appliance;
 - (IV) water supply, as determined by viewing functional flow in two fixtures operated simultaneously;
 - (V) fixture drain performance;
 - (VI) orientation of hot and cold faucets;
 - (VII) installed mechanical drain stops;
 - (VIII) commodes, fixtures, showers, tubs, and enclosures; and
 - (IX) the condition of the gas distribution system.
- (2) The inspector is not required to:
 - (A) operate any main, branch, or shut-off valves;
 - (B) operate or inspect sump pumps or waste ejector pumps;
 - (C) verify the performance of:
 - (i) the bathtub overflow;
 - (ii) clothes washing machine drains or hose bibbs;
 - (iii) floor drains;
 - (D) inspect:
 - (i) any system that has been winterized, shut down or otherwise secured;
 - (ii) circulating pumps, free-standing appliances, solar water heating systems, water-conditioning equipment, filter systems, water mains, private water supply systems, water wells, pressure tanks, sprinkler systems, swimming pools, or fire sprinkler systems;
 - (iii) inaccessible gas supply system components for leaks;
 - (iv) for sewer clean-outs; or
 - (v) for the presence or performance of private sewage disposal systems; or
 - (E) determine:
 - (i) quality, potability, or volume of the water supply;

- (ii) effectiveness of backflow or anti-siphon devices.
- (b) Water heaters.
 - (1) General Requirements.
 - (A) The inspector shall:
 - (i) report:
 - (I) the energy source;
 - (II) the capacity of the units;
 - (ii) report as Deficient:
 - (I) inoperative units;
 - (II) leaking or corroded fittings or tanks;
 - (III) damaged or missing components;
 - (IV) the absence of a cold water shut-off valve;
 - (V) if applicable, the absence of a pan or a pan drain system that does not terminate over a waste receptor or to the exterior of the building above the ground surface;
 - (VI) inappropriate locations;
 - (VII) the lack of protection from physical damage;
 - (VIII) burners, burner ignition devices or heating elements, switches, or thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;
 - (IX) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;
 - (X) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;
 - (XI) the absence of or visible deficiencies in the temperature and pressure relief valve and discharge piping;
 - (XII) a temperature and pressure relief valve that failed to operate, when tested manually;
 - (B) The inspector is not required to:
 - (i) verify the effectiveness of the temperature and pressure relief valve, discharge piping, or pan drain pipes; or
 - (ii) operate the temperature and pressure relief valve if the operation of the valve may, in the inspector's reasonable judgment, cause damage to persons or property; or
 - (iii) determine the efficiency or adequacy of the unit.
 - (2) Requirements for electric units. The inspector shall report as Deficient deficiencies in:
 - (A) performance of heating elements; and
 - (B) condition of conductors; and
 - (3) Requirements for gas units. The inspector shall report as Deficient:
 - (A) gas leaks in water heater not associated with the gas distribution system;
 - (B) flame impingement, uplifting flame, improper flame color, or excessive scale build-up;

~~[(C) the absence of a gas shut-off valve within six feet of the appliance;]~~

~~[(D) the absence of a gas appliance connector or one that exceeds six feet in length;]~~

~~[(E) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings;]~~

(C) [(F)] deficiencies in:

(i) combustion and dilution air;

~~[(ii) gas shut-off valves;]~~

~~[(iii) access to a gas shutoff valves that prohibit full operation;]~~

[(iv) gas appliance connector materials; and]

[(v)] [(+)] vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.

(c) Hydro-massage therapy equipment.

(1) The inspector shall report as Deficient:

(A) inoperative units;

(B) the presence of active leaks;

(C) deficiencies in components and performance;

(D) missing and damaged components;

(E) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish; and

(F) the absence or failure of operation of ground-fault circuit interrupter protection devices; and

(2) The inspector is not required to determine the adequacy of self-draining features of circulation systems.

(d) Gas distribution systems.

(1) The inspector shall:

(A) report:

(i) location of gas meter; and

(ii) visible material used for gas distribution system;

(B) report as Deficient:

(i) noticeable gas leaks;

(ii) the absence of a gas shut-off valve within six feet of the appliance;

(iii) the absence of a gas appliance connector or one that exceeds six feet in length;

(iv) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings; and

(v) deficiencies in:

(I) gas shut-off valves;

(II) access to a gas shutoff valves that prohibits full operation;

(III) gas appliance connector materials; and

(vi) deficiencies in the condition and type of gas distribution lines and fittings;

(vii) lack of visible bonding on gas distribution system, including corrugated stainless steel tubing (CSST); and

(viii) lack of visible sediment traps.

(2) Specific limitation for gas lines. The inspector is not required to:

(A) inspect sacrificial anode bonding or for its existence;

(B) pressurize or test gas system, drip legs or shut-off valves;

(C) operate gas line shut-off valves; or

(D) light or ignite pilot flames.

§535.232. *Standards of Practice: Minimum Inspection Requirements for Appliances.*

[(a) General provisions. The inspector is not required to:]

~~[(1) operate or determine the condition of other auxiliary components of inspected items;]~~

~~[(2) test for microwave oven radiation leaks;]~~

~~[(3) inspect self-cleaning functions;]~~

~~[(4) disassemble appliances;]~~

~~[(5) determine the adequacy of venting systems; or]~~

~~[(6) determine proper routing and lengths of duct systems.]~~

[(a) [(b)] Dishwashers. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) rusted, missing or damaged components;

(4) the presence of visible active water leaks; and

(5) the absence of visible backflow prevention.

[(b) [(e)] Food waste disposers. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components; and

(4) the presence of visible active water leaks.

[(c) [(d)] Range hoods and exhaust systems. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) ducts that do not terminate outside the building, if the unit is not of a re-circulating type or configuration; and

(5) improper duct material.

[(d) [(e)] Electric or gas ranges, cooktops, and ovens. The inspector shall report as Deficient:

(1) inoperative units;

(2) missing or damaged components;

(3) combustible material within thirty inches above the cook top burners;

(4) absence of an anti-tip device, if applicable;

(5) gas leaks in the gas range, cooktops and ovens not associated with the gas distribution system;

~~[(6) the absence of a gas shutoff valve within six feet of the appliance;]~~

~~[(7) the absence of a gas appliance connector or one that exceeds six feet in length;]~~

~~[(8) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings; and]~~

(6) [(9)] deficiencies in:

(A) thermostat accuracy (within 25 degrees at a setting of 350° F); and

(B) mounting and performance.[:]

~~[(C) gas shut-off valves;]~~

~~[(D) access to a gas shutoff valves that prohibits full operation; and]~~

~~[(E) gas appliance connector materials.]~~

(e) [(f)] Microwave ovens. The inspector shall inspect built-in units and report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting; and

(3) missing or damaged components.

(f) [(g)] Mechanical exhaust systems and bathroom heaters. The inspector shall report as Deficient:

(1) the lack of mechanical ventilation in a bathroom if no operable window is present;

(2) [(+)] inoperative units;

(3) [(2)] deficiencies in performance or mounting;

(4) [(3)] missing or damaged components;

(5) [(4)] ducts that do not terminate outside the building; and

(6) [(5)] a gas heater that is not vented to the exterior of the building unless the unit is listed as an unvented type.

(g) [(h)] Garage door operators. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) installed photoelectric sensors located more than six inches above the garage floor; ~~[and]~~

(5) deficiencies in performance or absence of auto reversing mechanisms and manual detachment device; and

(6) [(5)] door locks or side ropes that have not been removed or disabled.

(h) [(i)] Dryer exhaust systems. The inspector shall report as Deficient:

(1) missing or damaged components;

(2) the absence of a dryer exhaust system when provisions are present for a dryer;

(3) ducts that do not terminate to the outside of the building;

(4) screened terminations; and

(5) ducts that are not made of metal with a smooth interior finish.

(j) General provisions. The inspector is not required to:

(1) operate or determine the condition of other auxiliary components of inspected items;

(2) test for microwave oven radiation leaks;

(3) inspect self-cleaning functions;

(4) disassemble appliances;

(5) determine the adequacy of venting systems;

(6) determine proper routing and lengths of duct systems; or

(7) operate or determine the condition of clothes washer, clothes dryer, or refrigerator.

§535.233. *Standards of Practice: Minimum Inspection Requirements for Optional Systems.*

(a) An inspector is not required to inspect the components or systems described under this section.

(b) If an inspector agrees to inspect a component or system described under this section, the general provisions under §535.227 of this title and the provisions and requirements of this section applicable to that component or system apply.

(c) Landscape irrigation (sprinkler) systems.

(1) The inspector shall:

(A) manually operate all zones or stations on the system through the controller;

(B) report as Deficient:

(i) the absence of a rain or moisture sensor,

(ii) inoperative zone valves;

(iii) surface water leaks;

(iv) the absence of a backflow prevention device;

(v) the absence of shut-off valves between the water meter and backflow device;

(vi) deficiencies in the performance and mounting of the controller;

(vii) missing or damaged components; and

(viii) deficiencies in the performance of the water emission devices; such as, sprayer heads, rotary sprinkler heads, bubblers or drip lines.

(2) The inspector is not required to inspect:

(A) for effective coverage of the irrigation system;

(B) the automatic function of the controller;

(C) the effectiveness of the sensors; such as, rain, moisture, wind, flow or freeze sensors; ~~[or]~~

(D) sizing and effectiveness of backflow prevention device; or

(E) report on the performance of an underground zone.

(d) Swimming pools, spas, hot tubs, and equipment.

(1) The inspector shall:

(A) report the type of construction;

(B) report as Deficient:

(i) the presence of a single blockable main drain (potential entrapment hazard);

(ii) a pump motor, blower, or other electrical equipment that lacks bonding;

(iii) the absence of or deficiencies in safety barriers;

(iv) water leaks in above-ground pipes and equipment;

(v) the absence or failure in performance of ground-fault circuit interrupter protection devices; and

(vi) deficiencies in:

(I) surfaces;

(II) tiles, coping, and decks;

(III) slides, steps, diving boards, handrails, and other equipment;

(IV) drains, skimmers, and valves;

(V) filters, gauges, pumps, motors, controls, and sweeps;

(VI) lighting fixtures; and

(VII) the pool heater that these standards of practice require to be reported for the heating system.

(2) The inspector is not required to:

(A) disassemble filters or dismantle or otherwise open any components or lines;

(B) operate valves;

(C) uncover or excavate any lines or concealed components of the system;

(D) fill the pool, spa, or hot tub with water;

(E) inspect any system that has been winterized, shut down, or otherwise secured;

(F) determine the presence of sub-surface water tables;

(G) determine the effectiveness of entrapment covers;

(H) determine the presence of pool shell or sub-surface leaks; or

(I) inspect ancillary equipment such as computer controls, covers, chlorinators or other chemical dispensers, or water ionization devices or conditioners other than required by this section.

(e) Outbuildings.

(1) The inspector shall report as Deficient the absence or failure in performance of ground-fault circuit interrupter protection devices in grade-level portions of unfinished accessory buildings used for storage or work areas, boathouses, and boat hoists; and

(2) The inspector shall report as Deficient deficiencies in the structural, electrical, plumbing, heating, ventilation, and cooling systems that these standards of practice require to be reported for the principal building.

(f) Private water wells.

(1) The inspector shall:

(A) operate at least two fixtures simultaneously;

(B) recommend or arrange to have performed coliform testing;

(C) report:

(i) the type of pump and storage equipment;

(ii) the proximity of any known septic system;

(D) report as Deficient deficiencies in:

(i) water pressure and flow and performance of pressure switches;

(ii) the condition of accessible equipment and components; and

(iii) the well head, including improper site drainage and clearances.

(2) The inspector is not required to:

(A) open, uncover, or remove the pump, heads, screens, lines, or other components of the system;

(B) determine the reliability of the water supply or source; or

(C) locate or verify underground water leaks.

(g) Private sewage disposal [(septic)] systems.

(1) The inspector shall:

(A) report:

(i) the type of system;

(ii) the location of the drain or distribution field;

(iii) the proximity of any known water wells, underground cisterns, water supply lines, bodies of water, sharp slopes or breaks, easement lines, property lines, soil absorption systems, swimming pools, or sprinkler systems;

(B) report as Deficient:

(i) visual or olfactory evidence of effluent seepage or flow at the surface of the ground;

(ii) inoperative aerators or dosing pumps; and

(iii) deficiencies in:

(I) accessible components;

(II) functional flow;

(III) site drainage and clearances around or adjacent to the system; and

(IV) the aerobic discharge system.

(2) The inspector is not required to:

(A) excavate or uncover the system or its components;

(B) determine the size, adequacy, or efficiency of the system; or

(C) determine the type of construction used.

(h) Other built-in appliances. The inspector shall report deficiencies in condition or operation of other built-in appliances not listed under §535.232 of this title.

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

Filed with the Office of the Secretary of State on May 6, 2021.

TRD-202101793

Vanessa Burgess

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: June 20, 2021

For further information, please call: (512) 936-3284



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.17

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 421 Standards For Certification, concerning §421.17, Requirement to Maintain Certification.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to rule §429.17(c) is to provide an exception when special circumstances are presented for renewal of a certification that has been expired for more than one year.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Executive Director, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be more accurate, clear, and concise rules regarding certification requirements.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to deborah.cowan@tcfp.texas.gov.

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032,

which authorizes the commission to adopt rules establishing the qualifications of fire protection personnel.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§421.17. Requirement to Maintain Certification.

(a) All full-time or part-time employees of a fire department or local government assigned duties identified as fire protection personnel duties must maintain certification by the commission in the discipline(s) to which they are assigned for the duration of their assignment.

(b) In order to maintain the certification required by this section, the certificate(s) of the employees must be renewed annually by complying with §437.5 of this title (relating to Renewal Fees) and Chapter 441 of this title (relating to Continuing Education) of the commission standards manual.

(c) Except for subsection (d) of this section, or upon determination by the Executive Director when special circumstances are presented, an individual whose certificate has been expired for one year or longer may not renew the certificate previously held. To obtain a new certification, an individual must meet the requirements in Chapter 439 of this title (relating to Examinations for Certification).

(d) A military service member whose certificate has been expired for three years or longer may not renew the certificate previously held. To obtain a new certification, the person must meet the requirements in Chapter 439 of this title [~~relating to Examinations for Certification~~]. In order to qualify for this provision, the individual must have been a military service member at the time the certificate expired and continued in that status for the duration of the three-year period.

(e) The commission will provide proof of current certification to individuals whose certification has been renewed.

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 May 6, 2021.

TRD-202101779

Michael Wisko

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 20, 2021

For further information, please call: (512) 936-3812



CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.19

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code, Chapter 435, Fire Fighter Safety, concerning §435.19, Enforcement of Commission Rules.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to §435.19 is to remove the language regarding no prior notification of a commission compliance inspection of a regulated entity. This amendment will streamline the process for agency compliance officers and shorten the amount of time necessary to complete a biennial inspection of a regulated entity.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Executive Director, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be more accurate, clear, and concise rules regarding when the commission will initiate a compliance inspection of a regulated entity.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments, therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002 is required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a

local government and, therefore, is not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to deborah.cowan@tcfp.texas.gov.

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.027 which authorizes the commission to adopt rules regarding conducting biennial inspections of regulated entities.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§435.19. *Enforcement of Commission Rules.*

(a) The commission shall enforce all commission rules at any time, including, but not limited to, commission investigations, fire department inspections, or upon receiving a written complaint from an identified person or entity of an alleged infraction of a commission rule.

(b) The commission shall initiate a biennial inspection with an email notifying the fire department and requesting electronic copies of the Standard Operating Procedures (SOPs), training records, and/or other documentation needed for review, be submitted within 48 business hours of notification. The e-mail will also indicate the date range for an on-site inspection within the upcoming two-week period. Compliance officers may work with the Head of Department to ensure all necessary department representatives will be present at the time of the inspection. Compliance Officers may postpone an inspection for extenuating circumstances with the Compliance Manager's approval. [not provide prior notification of an inspection to a fire department.]

(c) Upon receipt of a signed complaint alleging a violation of a commission rule, the commission shall have 30 days to initiate an investigation and report back to the complainant its progress.

(d) Upon substantiating the validity of a written complaint, the commission shall follow the procedures outlined in Texas Government Code, Chapter 419, §419.011(b) and (c).

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

Filed with the Office of the Secretary of State on May 6, 2021.

TRD-202101780

Michael Wisko

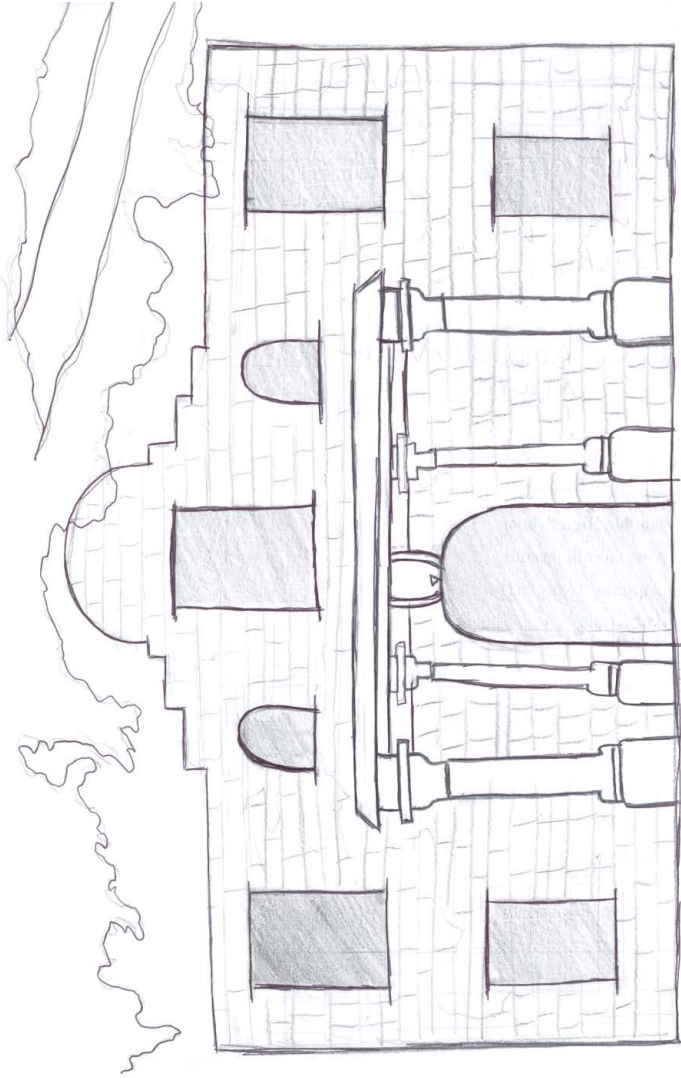
Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 20, 2021

For further information, please call: (512) 936-3812





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 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

SUBCHAPTER B. STANDARDS OF CARE IN CRISIS STABILIZATION UNITS

DIVISION 5. OPERATIONAL REQUIREMENTS

26 TAC §306.93

The Health and Human Services Commission withdraws the proposed new §309.93 which appeared in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9016).

Filed with the Office of the Secretary of State on May 11, 2021.

TRD-202101848

Nycia Deal

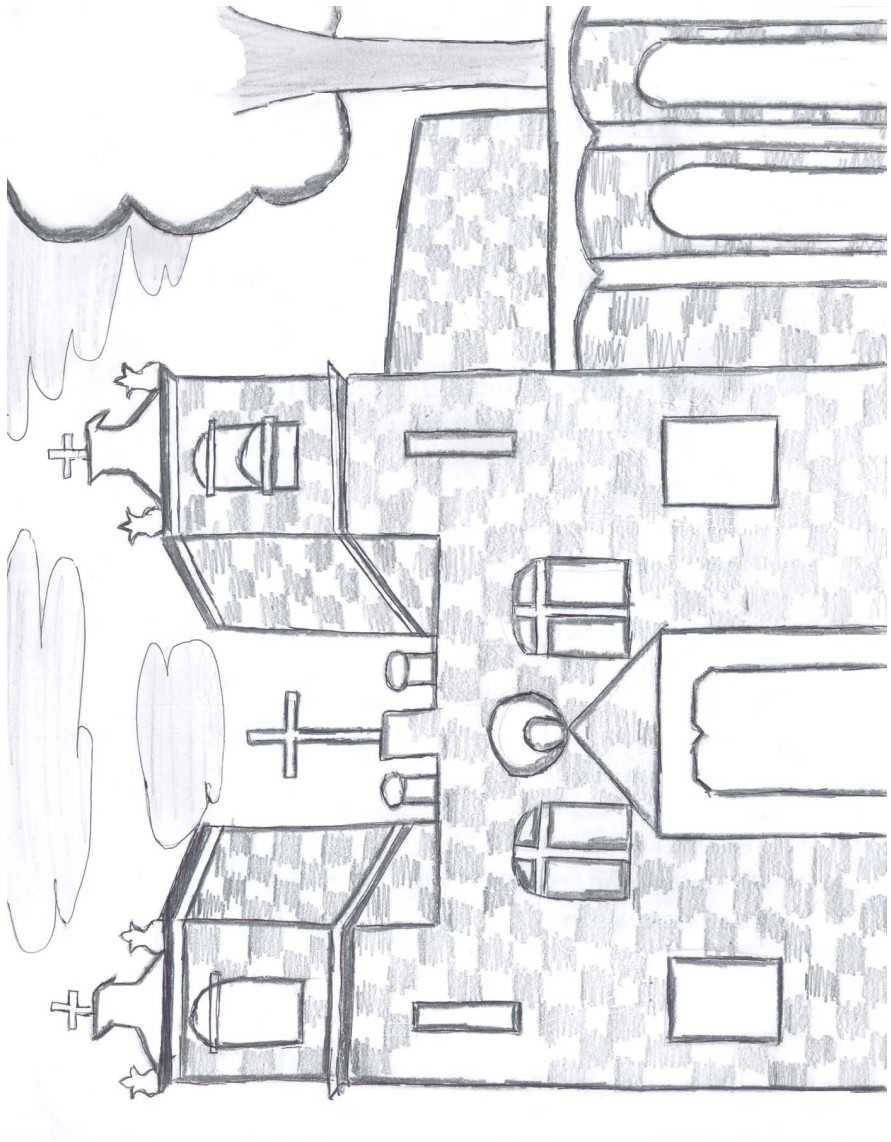
Attorney

Health and Human Services Commission

Effective date: May 11, 2021

For further information, please call: (512) 838-4346





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 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 13. TEXAS HISTORIC PRESERVATION TAX CREDIT PROGRAM

13 TAC §§13.3 - 13.6

The Texas Historical Commission (Commission) adopts amendments to 13 TAC §§13.3 - 13.6, concerning the State Franchise Tax Credit for Certified Rehabilitation of Certified Historic Structures. The rules are adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1150). The rules will not be republished.

The amendments collectively support the future implementation of an electronic application submission system for the applications required by the Commission as part of the tax credit program.

Sections 13.3 - 13.5 describe the information and submission requirements for each of the three parts of the tax credit application required by the Commission for review of proposed and completed projects. §§13.3(b)(4), 13.4(b)(3), and 13.5(b)(4) specifically require printed, hard copy photographs. The amendments remove these requirements and directs applicants to consult program guidance published by the Commission on its website for current submission requirements. Commission guidance materials will be revised to support an electronic submission system once one has been established. The Commission will prioritize open access through acceptance of standard format materials in the electronic submission system.

Section 13.3 outlines the requirements for the Part A - Evaluation of Significance application. Part A requires information and documentation to confirm that a subject property has an existing historic designation or is eligible for a historic designation that would qualify the property to participate in the tax credit program. §13.3(b)(4) requires photographic documentation of current building conditions be submitted in printed formats. The amendment requires photographic documentation to be submitted in conformity with the Commission's guidance materials as published on its website.

Section 13.4 outlines the requirements for the Part B - Evaluation of Significance application. Part B requires information and documentation to allow Commission staff to assess proposed architectural work. §13.4(b)(3) requires photographic documentation of proposed projects be submitted in printed formats. The amendment requires photographic documentation to be submitted in conformity with the Commission's guidance materials as published on its website.

Section 13.5 outlines the requirements for the Part C - Request for Certification of Completed Work application. Part C requires documentation to allow Commission staff to assess and certify completed architectural projects. §13.5(b)(4) requires photographic documentation of completed projects be submitted in printed formats. The amendment requires photographic documentation to be submitted in conformity with the Commission's guidance materials as published on its website.

Section 13.6 describes the process by which Commission staff review submitted applications. §13.6(b) requires submission of applications in a hard copy format and disallows submission via electronic mail. The amendment removes these specific constraints from the Administrative Code and instead directs applicants to follow published program guidance on the Commission's website.

No comments pertaining to these rule revisions were received during the thirty-day period following publication on February 19, 2021, in the *Texas Register*.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably effect the purposes of the Commission, including the Commission's oversight authority regarding the Texas Historic Preservation Tax Credit Program and under Texas Government Code §171.909 which authorizes the Commission to adopt rules necessary to implement the Tax Credit for Certified Rehabilitation of Certified Historic Structures under the Texas Franchise Tax. The Commission interprets this authority as allowing for the revision of application procedures and formats.

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 May 6, 2021.

TRD-202101784

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: May 26, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 463-6218



CHAPTER 21. HISTORY PROGRAMS SUBCHAPTER A. INTRODUCTION

13 TAC §21.3

The Texas Historical Commission (Commission) adopts amendments to the Texas Administrative Code, Title 13, Part 2, Chapter 21, Subchapter A, §21.3, related to historical marker and monument definitions. The amendments are adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1156). The rule will not be republished.

The amendments to §21.3 provide additional new and revised definitions of terms in Chapter 21. These revised definitions identify and define the categories of Commission historical designations so the public may understand how Commission rules apply to the defined terms.

No comments were received regarding the proposed amendments.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program.

No other statutes, articles, or codes are affected by these amendments.

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 May 6, 2021.

TRD-202101785

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: May 26, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 463-5854



SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

13 TAC §21.7

The Texas Historical Commission (Commission) adopts amendments to the Texas Administrative Code, Title 13, Part 2, Chapter 21, Subchapter B, §21.7, related to historical marker applications. The amendments are adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1157). The rule will not be republished. No comments were received regarding the proposed amendments.

The amendments to §21.7 clarify the type of Official Texas Historical Marker that may be awarded to a Historic Texas Cemetery by stating that medallions and plaques may also be awarded as part of the marker approval process.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program.

No other statutes, articles, or codes are affected by these amendments.

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 May 6, 2021.

TRD-202101786

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: May 26, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 463-5854



13 TAC §21.12

The Texas Historical Commission (Commission) adopts amendments to the Texas Administrative Code, Title 13, Part 2, Chapter 21, Subchapter B, §21.12, related to marker text requests. The amendments are adopted without changes to the proposed text, as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1159). The rule will not be republished.

The amendments to §21.12 clarify the rules by using more appropriate terminology and moves decision-making regarding marker text requests from staff to Texas Historical Commission commissioners. In making these changes, the amendments serve a broader purpose of ensuring the accuracy of marker text.

The Commission received two comments regarding existing language in §21.12 from two commenters. However, neither comment referred to the new proposed language as published on February 19, 2021 so it is unclear whether the commenters favor or oppose adoption of the amendments. Both comments related to the role of the State Historian, and both incorrectly identified a historian at the Texas State Historical Association as being in that position. Both comments suggested that a panel of three historians is not adequate to review marker challenges. THC believes that a panel of that size continues to be adequate.

One commenter suggested that not all three historians should be from the same university. THC believes that the requirements for appointment to that committee will make it extremely unlikely that all three would be from the same institution. Finally, another commenter suggested that all meetings of that panel be posted for public attendance. The recommendations of the panel will go to THC staff, not to the commission itself, and they are not acting in the role of an advisory committee under state law, so will not be publicly posted. However, appeals from staff decisions will go to the History Programs Committee, and all meetings of that committee are posted meetings open to public attendance. No changes were made based on these comments.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program.

No other statutes, articles, or codes are affected by these amendments.

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 May 6, 2021.

TRD-202101787

Mark Wolfe

Executive Director

Texas Historical Commission

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Proposal publication date: February 19, 2021

For further information, please call: (512) 463-5854



13 TAC §21.13

The Texas Historical Commission (Commission) adopts new rule, §21.13 of the Texas Administrative Code, Title 13, Part 2, Chapter 21, Subchapter B, related to removal of historical markers and monuments, without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1160). The rule will not be republished.

The new rule, §21.13, provides a process for individuals, groups, and County Historical Commissions (CHCs) to request removal of Official Texas Historical Markers and monuments. The Commission determined that this rule was necessary because no process for removal previously existed. This rule now allows for removal under the Commission's oversight.

The Commission received one comment opposed to new §21.13 from a commenter. This comment suggested that allowing markers to be removed would make it unlikely that any new markers will be installed. The purpose of the new rule is to provide a uniform process for removal subject to the Commission's oversight authority. Several people have requested removal for current markers, but the Commission does not have a process established to consider removal. Even so, the Commission does not anticipate that the adoption of this rule will generate many requests for removal nor should it affect applications for new markers. To this point, the Commission has received very few requests to remove markers. No changes were made based on this comment.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program.

No other statutes, articles, or codes are affected by these amendments.

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

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Mark Wolfe

Executive Director

Texas Historical Commission

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For further information, please call: (512) 463-5854



CHAPTER 26. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

13 TAC §26.3

The Texas Historical Commission (Commission) adopts amendments to §26.3, relating to Practice and Procedure, in Title 13, Part 2, Chapter 26 of the Texas Administrative Code. The rule is adopted without changes to the proposed text as published in the February 26, 2021, issue of the *Texas Register* (46 TexReg 1319). The rule will not be republished.

Section 26.3 clarifies the interpretation of terms and phrases used in the Antiquities Code of Texas but not defined therein.

The definition §26.3(41) distinguishes between "Landmarks," defined under this Chapter as State Antiquities Landmarks, and aluminum "Markers" erected in cooperation with the Texas Historical Commission under Chapter 21, Subchapter B. Since markers are not considered to be structures, work on markers will not be issued Historic Buildings and Structures Antiquities Permits under this definition.

The revision to §26.3(43) fully elaborates upon the physical characteristics of "Monuments" while retaining the existing rule's focus on structures commemorating an event, person, or place. The revision clarifies that monuments may include landscape elements, as well as built or installed features. The previous reference to the Capitol grounds has been omitted to reflect the commission's absence of authority over this location under these rules.

No comments pertaining to these rule revisions were received during the thirty-day period following publication in the *Texas Register* on February 26, 2021.

The amendments are adopted under the authority of Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably effect the purposes of the Commission, including the Commission's oversight authority regarding the Antiquities Code of Texas in Texas Government Code §442.005(b). The Commission interprets this authority as allowing for the establishment of definitions related to historic buildings and structures designated as State Antiquities Landmarks.

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

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TRD-202101790

Mark Wolfe

Executive Director

Texas Historical Commission

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Proposal publication date: February 26, 2021

For further information, please call: (512) 463-6218

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SUBCHAPTER D. HISTORIC BUILDINGS AND STRUCTURES

13 TAC §26.22

The Texas Historical Commission (Commission) adopts amendments to §26.22, relating to Practice and Procedure, Title 13, Part 2, Chapter 26 of the Texas Administrative Code. The rule is adopted without changes to the proposed text as published in the February 26, 2021, issue of the *Texas Register* (46 TexReg 1323). The rule will not be republished.

Section 26.22 provides Antiquities permit categories under which all work done on historic buildings or structures and their sites will be reviewed under Chapter 26.

To clarify the application of Historic Buildings and Structures Antiquities Permits, the provisions clarify that monuments may be permitted under the Antiquities Code (§26.22(10)) while markers must comply with Chapter 21 as they are not considered to be structures (§26.22(11)).

No comments pertaining to these rule revisions were received during the thirty-day period following publication on February 26, 2021, in the *Texas Register*.

The amendments are adopted under the authority of Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably effect the purposes of the Commission, including the Commission's oversight authority regarding the Antiquities Code of Texas in Texas Government Code §442.005(b). The Commission interprets this authority as allowing for the establishment of definitions related to historic buildings and structures designated as State Antiquities Landmarks.

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

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TRD-202101789

Mark Wolfe

Executive Director

Texas Historical Commission

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Proposal publication date: February 26, 2021

For further information, please call: (512) 463-6218

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE

SUBCHAPTER E. PETITION FOR ADOPTION OF RULES

22 TAC §533.50

The Texas Real Estate Commission (TREC) adopts new rule 22 TAC §533.50, Petition for Adoption of Rules, in Chapter 533,

Practice and Procedure, with non-substantive changes to the rule, as published in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1594). The rule will be republished.

The new rule §533.50 implements a statutory requirement that state agencies must prescribe by rule the form for a petition for adoption of rules and the procedure for its submission, consideration, and disposition.

The new rule was recommended by the Executive Committee.

Eight comments were received. Four comments were in support of the rule as published with one requesting a change in sentence structure. Two were neutral regarding the rule as published and two were opposed with one requesting simplified language. The Commission declined to make any changes to the rule based on these comments but did make a non-substantive change to add the agency's mailing address under subsection c.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102, as well as Texas Government Code §2001.021, which requires state agencies to adopt by rule procedures for petitioning for the adoption of rules.

§533.50. *Petition for Adoption of Rules.*

(a) Any interested person, as defined by §2001.021, Government Code, may request a rule be adopted, amended, or repealed by submitting a written petition to the Commission.

(b) The written petition must include:

(1) the person's full name, mailing address, telephone number, and email address;

(2) a brief summary of the proposed action and its desired effect;

(3) a justification for the proposed action set out in narrative form with sufficient particularity to inform the Commission the reasons and arguments on which the person is relying;

(4) if proposing a new rule, the text of the new rule in the exact form that is desired to be adopted; and

(5) if proposing an amendment or repeal, the specific section and text of the rule the person wants to change, with deletions crossed through and additions underlined.

(c) The written petition must be submitted to the Commission by:

(1) delivering the petition in person to the Commission's headquarters;

(2) sending the petition via email to general.counsel@trec.texas.gov;

(3) sending the petition via fax to (512) 936-3788, ATTN: General Counsel; or

(4) sending the petition via mail to P.O. Box 12188, Austin, Texas, 78711, ATTN: General Counsel.

(d) Not later than 60 days after the date of submission of a petition that complies with the requirements of this section, the Chair of the Commission, in consultation with Commission staff, shall review the petition and either:

(1) deny the petition in writing, stating the reasons for the denial; or

(2) initiate a rulemaking proceeding under Chapter 2001, Government Code, by directing that the petition be placed on the next agenda for discussion by:

(A) the Commission; or

(B) the appropriate advisory committee with subject matter jurisdiction.

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 May 6, 2021.

TRD-202101792

Vanessa Burgess

General Counsel

Texas Real Estate Commission

Effective date: May 26, 2021

Proposal publication date: March 12, 2021

For further information, please call: (512) 936-3284



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 411. STATE MENTAL HEALTH AUTHORITY RESPONSIBILITIES

SUBCHAPTER J. STANDARDS OF CARE AND TREATMENT IN PSYCHIATRIC HOSPITALS

The Texas Health and Human Services Commission (HHSC) adopts the repeal of Title 25, Chapter 411, Subchapter J, concerning Standards of Care and Treatment in Psychiatric Hospitals. The repeal is comprised of §§411.451 - 411.455, 411.459, 411.461 - 411.465, 411.468, 411.471 - 411.477, 411.482 - 411.485, 411.488, 411.490, 411.493 - 411.496, 411.499, and 411.500.

The repeals are adopted without changes to the proposed text as published in the January 1, 2021, issue of the *Texas Register* (46 TexReg 81) and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals are necessary to remove the rules in Chapter 411, Subchapter J, Standards of Care and Treatment in Psychiatric Hospitals and adopt new rules in Title 26, Part 1, Chapter 568, Standards of Care and Treatment in Psychiatric Hospitals. The rules for Title 26, Chapter 568 are published elsewhere in this issue of the *Texas Register* and are substantially similar to the rules proposed for repeal. The new rules comply with current statute, create consistent training guidelines, correct outdated citations, and update language throughout to reflect the transition to the new title.

COMMENTS

The 31-day comment period ended February 2, 2021.

During this period, HHSC did not receive any comments regarding the proposed repeal.

DIVISION 1. GENERAL REQUIREMENTS

25 TAC §§411.451 - 411.455

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, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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 May 7, 2021.

TRD-202101807

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: May 27, 2021

Proposal publication date: January 1, 2021

For further information, please call: (512) 834-4591



DIVISION 2. ADMISSION

25 TAC §§411.459, 411.461 - 411.465

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, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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

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Karen Ray

Chief Counsel

Department of State Health Services

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Proposal publication date: January 1, 2021

For further information, please call: (512) 834-4591



DIVISION 3. EMERGENCY TREATMENT

25 TAC §411.468

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, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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

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TRD-202101810

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: May 27, 2021

Proposal publication date: January 1, 2021

For further information, please call: (512) 834-4591



DIVISION 4. SERVICE REQUIREMENTS

25 TAC §§411.471 - 411.477

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, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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

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TRD-202101811

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: May 27, 2021

Proposal publication date: January 1, 2021

For further information, please call: (512) 834-4591



DIVISION 5. DISCHARGE

25 TAC §§411.482 - 411.485

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, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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

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Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 834-4591



DIVISION 6. DOCUMENTATION

25 TAC §411.488

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, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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

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Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 834-4591



DIVISION 7. STAFF DEVELOPMENT

25 TAC §411.490

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, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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

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TRD-202101816

Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 834-4591



DIVISION 8. PERFORMANCE IMPROVEMENT

25 TAC §§411.493 - 411.496

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, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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

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Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 834-4591



DIVISION 9. REFERENCES AND DISTRIBUTION

25 TAC §§411.499, §411.500

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, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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

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Karen Ray

Chief Counsel

Department of State Health Services

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Proposal publication date: January 1, 2021

For further information, please call: (512) 834-4591



SUBCHAPTER M. STANDARDS OF CARE AND TREATMENT IN CRISIS STABILIZATION UNITS

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §§411.601 - 411.604, 411.608 - 411.613, 411.617, 411.621 - 411.624, 411.628 - 411.633, 411.637, 411.641, 411.645, 411.646, 411.649, and 411.650 in Texas Administrative Code (TAC), Title 25, Part 1, Chapter 411, Subchapter M, concerning Standards of Care and Treatment in Crisis Stabilization Units. The repeal is adopted without changes to the proposed text as published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8995), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

As required by Texas Government Code §531.0201(a)(2)(C), client services functions previously performed by the Department of State Health Services (DSHS) were transferred to the Texas Health and Human Services Commission (HHSC) on September 1, 2016, in accordance with Texas Government Code §531.0201 and §531.02011. The purpose of repealing and replacing these rules is to outline requirements for standards of care for individuals receiving treatment and services in a crisis

stabilization unit (CSU) to ensure the continued operation of CSUs.

New rules in 26 TAC, Part 1, Chapter 306, Subchapter B, Standards of Care and Treatment in Crisis Stabilization Units are adopted elsewhere in this issue of the *Texas Register*.

COMMENTS

The 31-day comment period ended January 19, 2021. During this period, HHSC did not receive comments regarding the proposed repeal.

DIVISION 1. GENERAL REQUIREMENTS

25 TAC §§411.601 - 411.604

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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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

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TRD-202101802

Karen Ray

Chief Counsel

Department of State Health Services

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Proposal publication date: December 18, 2020

For further information, please call: (512) 838-4346



DIVISION 2. ADMISSION

25 TAC §§411.608 - 411.613

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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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

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TRD-202101803
Karen Ray
Chief Counsel
Department of State Health Services
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Proposal publication date: December 18, 2020
For further information, please call: (512) 838-4346



DIVISION 3. EMERGENCY TREATMENT

25 TAC §411.617

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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (512) 838-4346



DIVISION 4. SERVICE REQUIREMENTS

25 TAC §§411.621 - 411.624

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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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

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TRD-202101805

Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (512) 838-4346



DIVISION 5. DISCHARGE

25 TAC §§411.628 - 411.633

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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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

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TRD-202101806
Karen Ray
Chief Counsel
Department of State Health Services
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Proposal publication date: December 18, 2020
For further information, please call: (512) 838-4346



DIVISION 6. DOCUMENTATION

25 TAC §411.637

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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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

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TRD-202101809

Karen Ray
Chief Counsel
Department of State Health Services
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Proposal publication date: December 18, 2020
For further information, please call: (512) 838-4346



DIVISION 7. STAFF DEVELOPMENT

25 TAC §411.641

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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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

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TRD-202101813
Karen Ray
Chief Counsel
Department of State Health Services
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Proposal publication date: December 18, 2020
For further information, please call: (512) 838-4346



DIVISION 8. SENTINEL EVENTS AND EXTERNAL REVIEWS

25 TAC §411.645, §411.646

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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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

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TRD-202101818

Karen Ray
Chief Counsel
Department of State Health Services
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Proposal publication date: December 18, 2020
For further information, please call: (512) 838-4346



DIVISION 9. REFERENCES AND DISTRIBUTION

25 TAC §411.649, §411.650

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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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

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Karen Ray
Chief Counsel
Department of State Health Services
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Proposal publication date: December 18, 2020
For further information, please call: (512) 838-4346



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

SUBCHAPTER B. STANDARDS OF CARE IN CRISIS STABILIZATION UNITS

The Texas Health and Human Services Commission (HHSC) adopts new §306.41, concerning Purpose; §306.43, concerning Application; §306.45, concerning Definitions; §306.47, concerning General Provisions; §306.51, concerning Admission Criteria; §306.53, concerning Pre-admission Screening and Assessment; §306.55, concerning Voluntary Admission Criteria and Intake Process; §306.57, concerning Involuntary Admission Criteria and Intake Process; §306.59, concerning Voluntary Treatment Following Voluntary Admission; §306.61, concerning Crisis Stabilization Unit Medical Services; §306.63, concerning Crisis Stabilization Unit Nursing Services; §306.65,

concerning Crisis Stabilization Services and Recovery or Treatment Planning; §306.67, concerning Additional Standards of Care for Children and Adolescents; §306.71, concerning Discharge Planning; §306.73, concerning Discharge Notices; §306.75, concerning Discharge of a Voluntarily-Admitted Individual; §306.77, concerning Maximum Length of Stay for a Voluntarily-Admitted Individual; §306.79, concerning Discharge of an Involuntarily-Admitted Individual; §306.81, concerning Medical Record; §306.83, concerning Staff Training; §306.85, concerning Minimum Staffing Requirements; §306.87, concerning Protection of an Individual Receiving Crisis Stabilization Unit Services; §306.89, concerning Crisis Stabilization Unit Response to an Emergency Medical Condition; §306.91, concerning Transfers; §306.95, concerning Response to External Reviews.

New §§306.45, 306.47, 306.51, 306.53, 306.55, 306.57, 306.61, 306.67, 306.71, 306.73, 306.75, 306.77, 306.79, 306.81, 306.83, 306.85, 306.87, and 306.91 are adopted with changes to the proposed text as published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9001). These rules will be republished. Sections 306.41, 306.43, 306.59, 306.63, 306.65, 306.89, and 306.95 are adopted without changes to the proposed text as published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9001), and therefore will not be republished. New §306.93 is being withdrawn elsewhere in this edition of the *Texas Register*.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to comply with Texas Government Code §531.0201(a)(2)(C), which requires the Department of State Health Services (DSHS) to ensure that client services functions previously performed by DSHS were transferred to HHSC on September 1, 2016. The new rules in the Texas Administrative Code (TAC) Title 26, Part 1, Chapter 306, Subchapter B, concerning Standards of Care in Crisis Stabilization Units, address the content of rules in 25 TAC Chapter 411, Subchapter M, concerning Standards of Care and Treatment in Crisis Stabilization Units. The rules in Chapter 411 are repealed elsewhere in this issue of the *Texas Register*.

The rules establish guidelines for the standards of care and treatment of individuals with mental illness or serious emotional disturbance who receive crisis stabilization services in crisis stabilization units (CSUs) licensed under Texas Health and Safety Code, Chapter 577 and 26 TAC Chapter 510 (relating to Private Psychiatric Hospitals and Crisis Stabilization Units).

The rules outline the requirements for voluntary or involuntary admission, pre-admission screening and assessment, intake processes, treatment, services, and discharge for individuals in CSUs. The new rules establish responsibilities of CSU administrators and staff members, and introduce standards related to services provided to children and adolescents. The new rules allow licensed physician assistants (PAs) and advanced practice registered nurses (APRNs) to perform physician-delegated medical services and evaluations within their respective scopes of practice. The new rules also allow peer specialists to perform peer specialist services in accordance with 1 TAC Chapter 354, Subchapter N (relating to Peer Specialist Services), and allow qualified mental health professional-community services in accordance with 26 TAC Chapter 301, Subchapter G (relating to Mental Health Community Services Standards). The new rules establish standards related to staffing practices, staff training, and credentialing; and permit the use of telecommunication or information technology.

COMMENTS

The 31-day comment period ended January 19, 2021. During this period, HHSC received comments regarding the proposed rules from four commenters, including Citizens Commission on Human Rights-Texas, Disability Rights Texas, Hill Country Mental Health and Developmental Disabilities Center, and Texas Council for Developmental Disabilities. A summary of comments relating to the new Chapter 306, Subchapter B, Standards of Care in Crisis Stabilization Units and HHSC's responses follows.

Comment: Two commenters expressed concern that the definition for adult caregiver was intended to refer to parties who could seek temporary authorization to consent to voluntary inpatient mental health services for a child under Texas Family Code Chapter 35A. The commenters consequently recommended that the definition of adult caregiver under §306.45 be amended to include an adult person who receives an order under Texas Family Code, Chapter 35A to voluntarily admit a child to inpatient mental health services.

Response: HHSC declines to make modifications to the definition of adult caregiver in response to this comment. This term is intended to refer to non-parent parties with authority to provide care for a child, as distinguished from the specific authority to consent to temporary voluntary mental health services under Texas Family Code Chapter 35A. However, HHSC modified the list of persons that may request voluntary admission in §306.55(b)(2) to include a cross reference to Texas Family Code Chapter 35A, Temporary Authorization for Inpatient Mental Health Services For Minor Child.

Comment: One commenter recommended that the definition of crisis stabilization services in §306.45(13) and crisis stabilization unit in §306.45(14) retain the word "residential" to describe short-term residential treatment.

Response: HHSC agrees and revised the rules as recommended.

Comment: Two commenters recommended amending the definition of "monitoring" in §306.45(38) by adding the word "or" to clarify that monitoring would consist of either staff members observing an individual in person continuously or at pre-determined intervals.

Response: HHSC agrees and revised the rule as recommended.

Comment: One commenter recommended defining or clarifying the assessment tool adopted by HHSC in §306.45(54)(D).

Response: HHSC declines to make modifications to this rule in response to this comment. The name of the assessment tool is subject to change based on the HHSC-approved model of service delivery. The current uniform assessment tools for children and adolescents, and for adults, are maintained on the Health and Human Services website.

Comment: Two commenters recommended adding the citation, 25 TAC Chapter 415, Subchapter F, to the definition of restraint in §306.45(55).

Response: HHSC agrees and revised the rule as suggested.

Comment: Two commenters recommended adding the citation, 25 TAC Chapter 415, Subchapter F, to the definition of seclusion in §306.45(58).

Response: HHSC agrees and revised the rule as suggested.

Comment: Two commenters recommended retaining the definition of sentinel event in §306.45(60) which captures not only death and actual harm but events that result in potential harm, and two commenters recommended clarifying the expected purpose and result for reporting the information to HHSC Health Facility Licensing in §306.93(1).

Response: HHSC has removed the definition for sentinel event. A medical error or adverse event is reportable to HHSC pursuant to Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units). House Bill (H.B.) 1614, 78th Legislature, Regular Session, 2003, amended Texas Health and Safety Code, Chapter 577, by adding Subchapter B, Patient Safety Program requiring private psychiatric hospitals and crisis stabilization units to report certain medical errors to HHSC. This subchapter expired under its own terms on September 1, 2007; therefore, the reporting requirements associated with H.B. 1614 are no longer applicable. HHSC further revised the rules by deleting outdated language regarding sentinel events in §306.45 as necessary to remain consistent with Texas Health and Safety Code, Chapter 577 and Chapter 510 of this title. The subsequent definitions were renumbered. New §306.93 is being withdrawn elsewhere in this edition of the *Texas Register*.

Comment: Two commenters recommended adding a cross reference to 25 TAC Chapter 415, Subchapter A to the list of HHSC rules that providers must comply with under §306.47(g)(3) and suggested adding hyperlinks to the rules.

Response: HHSC declines to add hyperlinks at this time because the referenced Title 25 rule is subject to upcoming transfers to Title 26 of the TAC. However, HHSC revised the rule by adding the cross reference to new §306.47(g)(3) and renumbered subsequent paragraphs.

Comment: Two commenters recommended adding language in §306.57, §306.61(g)(4), §306.83(a)(1), §306.89(a)(2)(C), and §306.91(b), prohibiting a CSU from using an on-duty or off-duty law enforcement officer to assist with a transfer of an individual to a general hospital or another health care entity, or in an emergency medical condition.

Response: HHSC declines to make modifications to these rules in response to the comments. Law enforcement may be used for transportation as a method of last resort, in compliance with "the right not to be transported in a marked police or sheriff's car or accompanied by a uniformed officer unless other means are not available" in accordance with 25 TAC §404.154(29)(B). Additionally, HHSC does not have the authority to prohibit law enforcement accompaniment if an individual is brought to the CSU by an officer and the officer chooses to remain with the individual as the individual is considered to be in law enforcement custody at that time.

Comment: Two commenters recommended adding language in §306.47(g)(3) (renumbered on adoption to §306.47(g)(4)), §306.87(a), and §306.93 prohibiting the use of law enforcement officers, off-duty or contracted law enforcement officers, or off-duty contracted detention officers to restrain, seclude, or transport or to get, or guide, an individual to a room or floor at the CSU.

Response: HHSC declines to make modifications to these rules in response to this comment. HHSC does not have the authority to prohibit law enforcement accompaniment if an individual has been brought to the CSU by an officer and the officer chooses to remain with the individual, as the individual may potentially be in

law enforcement custody, particularly at the time of the pre-admission screening and assessment. Additionally, the definition of staff member in 25 TAC, §415.253(31) and §415.257 (relating to Staff Member Training) clarifies requirements and qualifications to initiate a restraint or seclusion in a CSU, which all CSU staff who conduct a restraint or seclusion must comply with. HHSC added a reference to applicable state laws and 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services) in §306.83(a)(1) and added a cross reference in §306.83(j) to 25 TAC §415.260 (relating to Initiation of Restraint or Seclusion in a Behavioral Emergency), to ensure clarity that all CSU staff must comply with these standards, including training requirements, to conduct a restraint or seclusion.

Comment: Two commenters expressed concerns that three years of age was determined to be an appropriate age for admission to a CSU under §306.51(4)(A). The commenter stated it seemed a particularly young age and asked if there are other means to provide services to an individual (and their support system) age 5 or younger.

Response: HHSC agrees to modify §306.51(4)(A) - (C) by deleting the age requirement and adding the circumstances and statutory cross references identifying who is not authorized to request a voluntary admission to a CSU.

Comment: Two commenters recommended adding the word "immediate" in §306.51(4)(E) prior to inpatient treatment for the condition.

Response: HHSC agrees and revised the rule to include the term "immediate." Since the rules were renumbered, the change is reflected in §306.51(5)(B).

Comment: Three commenters expressed concern that §306.51(5) violates Health and Safety Code Chapter 573. Specifically, the commenters shared that an individual should not be admitted involuntarily to a CSU without an order of emergency detention, while two other commenters stated there is no statutory authority to detain someone just with the filing of an emergency detention application, rather an order of emergency detention is required. The commenters shared further concerns that an individual's lack of capacity to consent to voluntary admission does not provide authority for a CSU to detain the individual without an order of emergency detention.

Response: Texas Health and Safety Code §573.021(a) allows for temporary acceptance of an individual for a preliminary examination when an emergency detention application has been filed but before the order is received. Temporary acceptance for a preliminary examination of an individual is not the same as admission into a CSU for treatment. Regarding the authority to temporarily accept an individual unable to legally provide consent, HHSC agrees and revised §306.51(5) (renumbered on adoption to §306.51(6)), as recommended, by deleting information regarding an individual unable to consent to voluntary admission. Additionally, HHSC updated the statutory cross reference in renumbered §306.51(6)(A) for temporary acceptance of a person for whom an application for detention is filed.

Comment: Two commenters recommended §306.51(5)(B) should specify obtaining an order for court-ordered Inpatient Mental Health Services.

Response: HHSC agrees with the commenter. Since the rules were renumbered, HHSC modified §306.51(6)(B) to reflect statutory language.

Comment: Two commenters recommended clarifying that if an individual voluntarily brought themselves to a CSU the person has a right to leave the CSU at any time until they are admitted.

Response: HHSC agrees and revised §306.53(a) by adding new §306.53(a)(2) to reflect the right of an individual who voluntarily presents at a CSU to leave any time before admission.

Comment: Two commenters recommended clearly indicating what other mental health professionals meet the criteria to provide a pre-screening and assessment under §306.53.

Response: HHSC agrees and revised §306.53(a)(3)(B), as recommended, and deleted §306.53(a)(3)(B)(ii) for clarification.

Comment: Two commenters recommended revising the language in §306.53(d) to clarify that face-to-face means in person and telehealth indicates the services are being provided remotely.

Response: HHSC agrees and revised §306.53(d), §306.53(e)(1), and §306.67(a)(1) by deleting references to face-to-face and adding a reference to telemedicine under §306.53(d) and in-person to §306.67(a)(1).

Comment: One commenter recommended revising §306.53(e) to allow for the delegation of the examination for voluntary admission to a CSU to a non-physician professional that may include an APRN or PA.

Response: HHSC declines to make modifications to this rule at this time. The Office of the Attorney General (OAG) in Opinion GA-0066 (2003) opined that that the examination under Health and Safety Code §572.002 may not be delegated by a physician.

Comment: Two commenters expressed concerns that there is no timeframe in §306.53(e) for the required physician examination. Additionally, the commenters recommended clarifying where the individual is while they wait for the physician examination.

Response: HHSC agrees to clarify where an individual is while they wait for the physician examination. HHSC revised §306.53(b) by adding new §306.53(b)(3) requiring CSU policy to include a process for ensuring an individual who is waiting for a physician examination remains in a location that is determined to be clinically appropriate and available. HHSC declines to make modifications to this rule in response to the examination timeframe. The physician examination timeframe for voluntary admission is within 72 hours before or 24-hours after admission as provided in §306.55(d)(3)(A). The timeframe for emergency detention preliminary examination is 12 hours as provided in §306.57(b)(1) and (d)(1)(A).

Comment: Two commenters recommended clarifying in §306.55(b)(1) that the adult caregiver who has obtained an order under Texas Family Code Chapter 35A may request a voluntary admission of an individual into a CSU.

Response: HHSC agrees and revised §306.55 by removing adult caregiver, or LAR from §306.55(b)(2) and adding the recommended language to new §306.55(b)(3).

Comment: Two commenters recommended retaining language in 25 TAC §411.609(b) regarding capacity to consent in §306.55(d). Additionally, the commenters recommended the person, at a minimum, should be referred to the local mental health authority (LMHA) or local behavioral health authority (LBHA) for crisis services in §306.55(d)(2)(B)(i).

Response: HHSC agrees to retain language from §411.609(b) in §306.51(4)(A) and §306.57(c) and (f) and added an individual

with capacity to consent in new §306.55(b)(4). HHSC agrees with the recommendation regarding §306.55(d)(2)(B)(i) and revised the rule to include the LMHA, LBHA, and local intellectual and developmental disability authority crisis services.

Comment: Two commenters recommended language be added to clarify that if the physician conducting the physical assessment and psychiatric examination of the individual determines the individual does not meet eligibility to receive inpatient mental health services, the individual cannot be billed in accordance with §572.0025(f-2).

Response: HHSC agrees with the commenter and modified §306.55 by moving §306.55(d)(3)(C) to new §306.55(e) and adding new subsection (f) in accordance with Texas Health and Safety Code §572.0025(f-1) and (f-2) which prohibits billing if an individual does not meet admission eligibility.

Comment: One commenter recommended that §306.57(c) be revised to allow for the examination to be completed by an APRN or PA following admission under Emergency Detention.

Response: HHSC declines to make modifications to this rule at this time. This is based on OAG guidance provided under OAG Opinion GA-0066 (2003) that the examination under Health and Safety Code §572.002 may not be delegated by a physician.

Comment: Two commenters expressed concern that §306.57(a) and (c) contradicts the age limit specified in 306.51(4)(A). The commenters shared that an individual's family member does not have authority to transport the individual to the CSU for emergency detention, and that rather only an LAR may do so. The commenters recommended deleting the reference to the family member in §306.57(b)(1)(B) and only reference the LAR. The commenters also expressed concern that a suitable location in §306.57(d)(2)(C)(iii) is vague.

Response: HHSC agrees and revised §306.57(a)(1), §306.57(b)(1)(B), and §306.57(c) as recommended. HHSC agrees and revised §306.57(d)(2)(C)(iii) by clarifying a suitable location identified by the individual, or LAR, if applicable.

Comment: Two commenters recommended that §306.57(g)(1)(A) include individual rights which must occur both orally and in writing in accordance with 25 TAC Chapter 404. The commenters recommended that the intake include obtaining relevant information about the individual including information about finances, insurance benefits, and advance directives, providing information about the CSU's services and treatment as they relate to the individual, the information about the protection and advocacy system, and information about the Ombudsman system.

Response: HHSC declines to make modifications to this rule in response to replicating information in §306.57(g). However, HHSC modified §306.57(g)(1)(A) and (B) by providing cross references to where the requested information is located in the division.

Comment: Two commenters recommended adding a timeframe in §306.61(e) by which the psychiatric evaluation must occur.

Response: HHSC declines to make modifications to this rule in response to this comment. The timeframe for the initial psychiatric evaluation is located in §306.55(d)(3)(A). The re-evaluation timeframe is located in §306.61(f).

Comment: Two commenters recommended that §306.61(g)(3) be deleted to prevent a medical director from referring an individual that has been admitted instead of transferring the individual.

Response: HHSC declines to make modifications to this rule in response to this comment. The manner in which an individual's medical treatment needs are addressed is the decision of the physician consistent with good professional judgment, the capabilities of each facility, and rights of the individual or the individual's LAR, in accordance with Title 25, Part 1, TAC §404.155(b)(6).

Comment: Two commenters recommended adding language in §306.75(b) to clarify that if a parent of a minor child or an adult caregiver requests discharge, the CSU must discharge the child immediately. The commenter suggests that the four-hour rule does not apply because they cannot be committed to inpatient care. Additionally, the commenter suggested adding language to clarify that if the voluntary admission was initiated by an adult caregiver, the child must be discharged within ten days in accordance with the Texas Family Code §34A.005(d)(3).

Response: HHSC declines to make the requested modification to §306.75(b). Texas Health and Safety Code §572.001 states a person younger than 18 years of age may not be involuntarily committed unless provided by Chapter 572, Chapter 55, Family Code, or department rule. Texas Health and Safety Code §572.004(f) requires an examination by a physician to allow for consideration of whether an individual, including a minor, may require an application for emergency detention or court ordered inpatient care. However, HHSC revised §306.77 by adding new §306.77(4) adding language related to the maximum length of stay of a child or adolescent admitted under Texas Family Code 35A, Order of Temporary Authorization.

Comment: One commenter recommended deleting the term "medical director" under §306.79(a)(1)(B) since there are others who may apply for the order for further detention.

Response: HHSC agrees and revised §306.79(a)(1)(B) as recommended.

Comment: Two commenters recommended revising §306.87(a) to clarify that protections apply to an individual accepted for pre-admission screening as well as individuals who have been admitted.

Response: HHSC agrees and added new §306.53(b)(4) regarding protections to an individual accepted for pre-admission screening and assessment. Cross references were also added in §306.87(a) for 25 TAC §415.260 (relating to Initiation of Restraint or Seclusion in a Behavioral Emergency) and §415.266 (relating to Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency).

Comment: Two commenters expressed concern with language in §306.91, relating to transfers due to dangerous behaviors, and stated that such routine transfers are not practical because doing so implies that no individual on an emergency detention order should remain in a CSU. The commenters further shared that CSUs are allowed to admit an individual on an emergency detention order which requires the individual to be at substantial risk of serious harm. An individual should not be transferred solely because they meet the criteria for emergency detention.

Response: HHSC agrees and revised §306.91(a) and §306.91(a)(1) by addressing issues related to a CSU transporting an individual as soon as possible to an appropriate facility when a physician, or designee, determines the individual is at serious risk of harm to self or others and the CSU is unable to provide an adequate assurance of safety. HHS also amends (a)

to include contacting law enforcement to transfer an individual under an emergency detention who has not yet been admitted or obtaining permission from the court that issued the order for emergency detention or order of protective custody.

Comment: Two commenters recommended delineating the timeframe within which the transfer must occur under §306.91(a)(3).

Response: HHSC declines to make modifications to this rule in response to this comment given that CSUs cannot guarantee when a bed at another appropriate inpatient mental health facility may be available. HHSC, however, did amend (a) to require CSUs to facilitate transfer as soon as possible.

HHSC made minor grammatical edits to §306.45(37); §306.45(58); §306.45(59); §306.45(61) - (73) were renumbered to §306.45(60) - (72); §306.51(3)(B) - (D); §306.51(5) - (7); §306.53(a)(3); §306.53(b)(2)(C); §306.55(b)(1) - (2); §306.55(d)(2)(B)(ii); §306.55(d)(3); §306.57(d)(2); §306.77(2) - (3); §306.79(a)(1)(B); §306.81(a)(12); §306.83(j); and §306.85(a) - (b).

HHSC made minor editorial changes to §306.45(22) by updating a cross reference; §306.47(g)(3) by adding a cross reference to 25 TAC Chapter 415, Subchapter A (relating to Prescribing Psychoactive medication); §306.51(3) - (4) by adding the term "voluntary"; §306.53(d) by adding the use of telemedicine medical services and updating the cross reference to Texas Health and Safety Code §573.024(a) - (d); §306.55(b)(1) by removing the cross reference to Texas Family Code Chapter 32; §306.55(b)(2) by updating information consistent with statute; §306.67(a)(1) by adding "or telemedicine medical" for rule consistency; §306.73 by updating a cross reference; and deleting the title to §306.91(a) for formatting consistency and accuracy.

HHSC made editorial changes to §306.45(44) consistent with the definition in 26 TAC Chapter 303, Subchapter A; §306.45(50)(B) by replacing the word person with individual; §306.51 by adding paragraph (3)(A) to ensure consistency with Texas Health and Safety Code Chapter 572; §306.57(A) and (B) by replacing the word "face-to-face" with terminology consistent with this subchapter; §306.57(d)(2) by replacing the word adult with individual; §306.57(d)(2)(A) by adding notifying the individual's LAR, if applicable, and any other person authorized by the individual, of the individual's release; §306.57(d)(2)(C) for coordinating with the individual, the individual's LAR, if applicable, or the apprehending county to arrange the individual's transportation after release; §306.61(e), §306.71(b), §306.75(g), and §306.79(a)(1)(A) by deleting references to physician-delegated PA or APRN.

DIVISION 1. GENERAL REQUIREMENTS

26 TAC §§306.41, 306.43, 306.45, 306.47

STATUTORY AUTHORITY

The new sections 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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A, which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

§306.45. *Definitions.*

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

(1) *Administrator*--A person or entity that has authority to represent a facility and is responsible for implementing and supervising its administrative policies and procedures and for administratively supervising the provision of services to individuals on a day-to-day basis.

(2) *Administrator's designee*--A staff member designated in a facility's written policies and procedures to act for a specified purpose on behalf of the administrator.

(3) *Admission*--The acceptance of an individual for crisis stabilization services based on a physician's order issued in accordance with §306.55 (relating to Voluntary Admission Criteria and Intake Process) and §306.57 (relating to Involuntary Admission Criteria and Intake Process) of this subchapter.

(4) *Admission examination*--A psychiatric examination and physical assessment conducted by a physician, to determine if an individual requesting voluntary admission to an inpatient mental health facility meets clinical criteria for admission, in accordance with Texas Health and Safety Code §572.0025(f).

(5) *Adolescent*--An individual at least 13 years of age, but younger than 18 years of age.

(6) *Adult*--An individual 18 years of age or older.

(7) *Adult caregiver*--An adult person whom a parent has authorized to provide temporary care for a child, as defined in Texas Family Code §34.0015(1).

(8) *APRN*--Advanced practice registered nurse. A registered nurse licensed by the Texas Board of Nursing and as provided in Texas Occupations Code §301.152.

(9) *Assessment*--The administrative process an inpatient mental health facility uses to gather information from an individual to determine if the admission is clinically justified, in accordance with Texas Health and Safety Code §572.0025(h)(2), including a medical history and the problem for which the individual is seeking treatment.

(10) *Business day*--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code §662.021.

(11) *Child*--An individual at least three years of age, but younger than 13 years of age.

(12) *Confidential information*--Any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of or includes any or all of the information that must be protected from unauthorized use or disclosure as required by applicable state or federal laws, and as defined in 1 TAC §390.1(5) (relating to Definitions).

(13) *Crisis stabilization services*--Short-term residential treatment designed to reduce acute symptoms of a mental illness or serious emotional disturbance of an individual and prevent admission of the individual to an inpatient mental health facility.

(14) *CSU*--Crisis stabilization unit. A short-term residential treatment unit designed to reduce an individual's acute symptoms of mental illness or serious emotional disturbance instead of admission to an inpatient mental health facility, licensed in accordance with Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units) and Texas Health and Safety Code Chapter 577.

(15) *Day*--Calendar day, unless otherwise specified.

(16) *DD*--Developmental disability. As listed in Texas Health and Safety Code §531.002(15), a severe, chronic disability attributable to mental or physical impairment or a combination of mental and physical impairments that:

(A) manifest before the individual reaches 22 years of age;

(B) are likely to continue indefinitely;

(C) reflect the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of a lifelong or extended duration and are individually planned and coordinated; and

(D) result in substantial functional limitations in three or more of the following categories of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(17) *Discharge*--The formal release of an individual from the custody and care of an inpatient mental health facility in accordance with Texas Health and Safety Code §572.004.

(18) *Emergency medical condition*--In accordance with the Emergency Medical Treatment & Labor Act (42 U.S.C. §1395dd) (Relating to examination and treatment for emergency medical conditions and women in labor), a medical condition manifested by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part; or

(D) in the case of a pregnant woman having contractions:

(i) inadequate time to arrange a safe transfer to a hospital before delivery; or

(ii) a transfer posing a threat to the health or safety of the woman or the unborn child.

(19) *General hospital*--A hospital operated primarily to diagnose, care for, and treat individuals who are physically ill and licensed in accordance with Texas Health and Safety Code Chapter 241.

(20) *HHSC*--Texas Health and Human Services Commission or its designee.

(21) *ID*--Intellectual disability. Consistent with Texas Health and Safety Code §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originates during the developmental period.

(22) *IDT*--Interdisciplinary team. A group of licensed, credentialed, and unlicensed staff members who possess the knowledge, skills, and expertise to develop and implement an individual's treatment or recovery plan and also includes:

- (A) the individual's treating physician;
 - (B) the individual, and the individual's LAR or adult caregiver, if applicable;
 - (C) the staff members identified in the treatment or recovery plan as responsible for providing or ensuring the provision of each treatment in accordance with §568.61(c)(1)(E)(iii) of this title (relating to Inpatient Mental Health Treatment and Treatment Planning);
 - (D) any person identified by the individual, and the individual's LAR or adult caregiver if applicable, unless clinically contraindicated; and
 - (E) other staff members as clinically appropriate.
- (23) Individual--A person seeking or receiving services under this subchapter.
- (24) Inpatient mental health facility--A mental health facility that can provide 24-hour residential and psychiatric services and that is:
- (A) a facility operated by HHSC;
 - (B) a private mental hospital licensed by HHSC;
 - (C) a community center, facility operated by or under contract with a community center or other entity HHSC designates to provide mental health services;
 - (D) an identifiable part of a general hospital in which diagnosis, treatment, and care for individuals with mental illness is provided and that is licensed by HHSC; or
 - (E) a hospital operated by a federal agency.
- (25) Intake--The administrative process for gathering information about an individual and giving an individual information about an inpatient mental health facility and the facility's treatment and services, in accordance with Texas Health and Safety Code §572.0025(h)(3).
- (26) Involuntarily-admitted individual--An individual receiving inpatient mental health facility services based on an admission made in accordance with:
- (A) Texas Health and Safety Code Chapter 573 and described in §306.57(a) of this subchapter; or
 - (B) Texas Health and Safety Code §574.021 and described in §306.57(f) of this subchapter.
- (27) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual regarding a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.
- (28) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.
- (29) Legal holiday--A holiday listed in the Texas Government Code §662.021 and an officially designated county holiday applicable to a court in which proceedings under the Texas Mental Health Code are held.
- (30) LIDDA--Local intellectual and developmental disability authority. An entity designated as the local intellectual and developmental disability authority by HHSC in accordance with Texas Health and Safety Code §533A.035.

- (31) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code §533.035(a).
- (32) LPHA--Licensed practitioner of the healing arts. A person who possesses any of the following state licenses is considered an LPHA and is automatically certified as a qualified mental health professional-community services (QMHP-CS):
- (A) a physician;
 - (B) a physician assistant;
 - (C) an APRN;
 - (D) a licensed psychologist;
 - (E) a licensed professional counselor;
 - (F) a licensed clinical social worker; or
 - (G) a licensed marriage and family therapist.
- (33) LVN--Licensed vocational nurse. A person licensed as a vocational nurse by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.
- (34) Medical director--A physician who is board eligible or certified in psychiatry by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry and who provides clinical and policy oversight for the CSU.
- (35) Medical record--A compilation of systematic and organized information relevant to the services provided to an individual.
- (36) Medical services--Acts or services provided by a physician acting as described in Texas Occupations Code Chapter 151, or as delegated by a physician, in accordance with Texas Occupations Code Chapter 157.
- (37) Mental illness--An illness, disease, or condition, other than a sole diagnosis of epilepsy, dementia, substance use disorder, ID, or DD that:
- (A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or
 - (B) grossly impairs behavior as demonstrated by recent disturbed behavior.
- (38) Monitoring--One or more staff members observing an individual in person continuously or at pre-determined intervals; as ordered by a physician or physician-delegated physician's assistant (PA) or APRN; or by established protocol; and intervening when necessary to protect the individual from harming self or others.
- (39) Nursing facility--A Medicaid-certified facility that is licensed in accordance with the Texas Health and Safety Code Chapter 242.
- (40) Nursing services--Acts or services provided by a registered nurse (RN) acting within the RN's scope of practice and assigned to an LVN, or delegated to an unlicensed person, in accordance with Texas Occupations Code Chapter 301.
- (41) Nursing staff--A person required to be licensed in accordance with Texas Occupations Code Chapter 301 to engage in professional or vocational nursing or the person delegated to perform common nursing functions under the authority of an RN.
- (42) Ombudsman--The Ombudsman for Behavioral Health Access to Care established by Texas Government Code §531.02251, which serves as a neutral party to help individuals, including individuals who are uninsured or have public or private health benefit coverage

and behavioral health care providers navigate and resolve issues related to the individual's access to behavioral health care, including care for mental health conditions and substance use disorders.

(43) PA--Physician's assistant. A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code Chapter 204.

(44) PASRR--Preadmission screening and resident review.

(45) PASRR Level I screening--The process of screening an individual seeking admission to a nursing facility to identify whether the individual is suspected of having a mental illness, ID, or DD.

(46) PASRR Level II evaluation--A face-to-face evaluation:

(A) of an individual seeking admission to a nursing facility who is suspected of having a mental illness, ID, or DD; and

(B) performed by a LIDDA, LHMA, or LBHA to determine if the individual has a mental illness, ID, or DD and, if so, to:

(i) assess the individual's need for care in a nursing facility;

(ii) assess the individual's need for specialized services; and

(iii) identify alternate placement options.

(47) Peer specialist--A person who uses lived experience, in addition to skills learned in formal training, to deliver strengths-based, person-centered services to promote an individual's recovery and resiliency, in accordance with 1 TAC Chapter 354, Subchapter N (relating to Peer Specialist Services).

(48) Physician--A staff member:

(A) licensed as a physician by the Texas Medical Board in accordance with Texas Occupations Code Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(49) Pre-admission screening--The clinical process used by a QMHP-CS or LPHA to gather information from an individual, including a medical history, any history of substance use, trauma, and the problem for which the individual is seeking treatment to determine if a physician should conduct an admission examination.

(50) Preliminary examination--The psychiatric examination and assessment for medical stability performed and documented by a physician in accordance with Texas Health and Safety Code §573.022 to determine if emergency detention in an inpatient mental health facility is clinically justified for an individual for whom:

(A) an application for emergency detention is filed in accordance with Texas Health and Safety Code §573.011;

(B) a peace officer or emergency medical services personnel of an emergency medical services provider transporting the individual in accordance with a memorandum of understanding executed in accordance with Texas Health and Safety Code §573.005 files a notification of detention completed by the peace officer in accordance with Texas Health and Safety Code §573.002(a); or

(C) the LAR transporting their adult ward, without the assistance of a peace officer, in accordance with Texas Health and Safety Code §573.003, files an application for detention in accordance with Texas Health and Safety Code §573.004.

(51) Psychosocial rehabilitative services--Services that assist an individual in regaining and maintaining daily living skills required to function effectively in the community.

(52) QMHP-CS--Qualified mental health professional-community services. A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, gerontology, special education, educational psychology, early childhood education, or early childhood intervention;

(B) is an RN; or

(C) completes an alternative credentialing process as determined by an LMHA or LBHA in accordance with HHSC requirements.

(53) Recovery--A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(54) Recovery or treatment plan--A written plan:

(A) is developed in collaboration with the individual, and the individual's LAR or adult caregiver if applicable, and a QMHP-CS or LPHA;

(B) is amended at any time based on an individual's needs or requests;

(C) guides the recovery process and fostering resiliency;

(D) is completed in conjunction with the assessment tool adopted by HHSC;

(E) identifies the individual's changing strengths, capacities, goals, preferences, needs, and desired outcomes; and

(F) includes recommended services and supports or reasons for the exclusion of services and supports.

(55) Restraints--Any personal, mechanical, or chemical restraint defined in 25 TAC §415.253 (relating to Definitions).

(56) RN--Registered nurse. A staff member licensed as a registered nurse by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.

(57) Screening--Activities performed by a QMHP-CS to:

(A) collect triage information either in person, or through telephone or telehealth interviews with an individual or collateral contact;

(B) determine if the individual's need is emergent, urgent, or routine, and conducted before the in person or telehealth assessment to determine the need for emergency services; and

(C) determine the need for immediate assessment and mental health treatment recommendations.

(58) Seclusion--The involuntary separation of an individual from other individuals for any period of time and or the placement of the individual alone in an area from which the individual is prevented from leaving, as defined in 25 TAC §415.253(28).

(59) SED--Serious emotional disturbance. A diagnosed mental health disorder that substantially disrupts a child's or adoles-

cent's ability to function socially, academically, and emotionally in accordance with Texas Government Code, §531.251.

(60) Serious physical injury--An injury determined by a physician, or physician-delegated PA or APRN, to require treatment by an appropriately licensed medical professional or licensed health-care professional, or in an emergency department or licensed hospital.

(61) Stabilize--With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the individual's transfer from a facility or, if the emergency medical condition for a woman is that she is in labor, that the woman has delivered the child and the placenta.

(62) Staff member--Personnel including a full-time and part-time employee, contractor, or intern, but excluding a volunteer.

(63) Staffing plan--A written plan that:

(A) demonstrates the number, qualifications, and responsibilities of staff members, including the administrator or designee, are appropriate for the size and scope of the services provided and that workloads are reasonable to meet the needs of individuals receiving services; and

(B) identifies staffing patterns, hours of coverage, and plans for providing back-up staff in emergencies.

(64) Substance use disorder--The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which meets the criteria described in the current edition of the *Diagnostic Statistical Manual of Mental Disorders* for substance use disorders.

(65) TAC--Texas Administrative Code.

(66) Telehealth service--A health-care service, other than telemedicine medical services, delivered by a health professional licensed, certified or otherwise entitled to practice in Texas and acting within the scope of the health professional's license, certification or entitlement to an individual at a different physical location other than the health professional using telecommunications or information technology, in accordance with Texas Occupation Code §111.001(3).

(67) Telemedicine medical service--A health-care service delivered to an individual at a different physical location using telecommunications or information technology by:

(A) a physician licensed in Texas; or

(B) a health professional who acts under the delegation and supervision of a physician licensed in Texas and within the scope of the health professional's license in Texas.

(68) Transfer--The movement (including the discharge) of an individual outside a facility at the facility's direction, but it does not include such a movement of an individual who has been declared dead or leaves the facility without the facility's permission.

(69) Treating physician--A physician who coordinates and oversees an individual's treatment.

(70) Unit--A discrete and identifiable area of an inpatient mental health facility that includes individuals' rooms or other living areas and is separated from another similar area:

(A) by a locked door;

(B) by a floor; or

(C) because the other similar area is in a different building.

(71) UP--Unlicensed person. A person, not licensed as a health care provider, who provides certain health related tasks and functions in a complementary or assistive role to the RN in providing direct care of an individual or carrying out common nursing functions as described in 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and care in conformity with this chapter:

(A) who is monetarily compensated, including nurse aides, assistants, attendants, technicians, and other individuals providing care or assistance of health-related services; or

(B) who is a professional nursing student, not licensed as an RN or LVN, providing care for monetary compensation and not as part of their formal education.

(72) Voluntarily admitted individual--An individual receiving facility services based on an admission in accordance with:

(A) §306.55 of this subchapter (relating to Voluntary Admission Criteria and Intake Process); or

(B) §306.59 of this subchapter (relating to Voluntary Treatment Following Involuntary Admission).

§306.47. *General Provisions.*

(a) The CSU must be open and provide services to individuals 24-hours a day, seven days a week, including admissions, based on the CSU's capability and capacity.

(b) The CSU must develop, and the medical director must approve, the CSU's written policies and procedures that ensure the CSU's compliance with this subchapter.

(c) All staff members must comply with this subchapter and the policies and procedures of the CSU.

(d) A CSU administrator, or administrator's designee must take appropriate measures to ensure a staff member's compliance with this subchapter and the policies and procedures of the CSU.

(e) A CSU nursing supervisor must ensure all orders issued by a physician, or physician-delegated PA or APRN, for an individual are appropriately implemented pursuant to state nursing licensure requirements.

(f) Except as provided by §306.51 of this subchapter (relating to Admission Criteria) or applicable state law, a physician may delegate any of the medical services described in this subchapter in accordance with Texas Occupations Code Chapter 157, Subchapter A.

(g) A CSU must comply with the following HHSC rules:

(1) Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units);

(2) 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services);

(3) 25 TAC Chapter 415, Subchapter A (relating to Prescribing Psychoactive medication);

(4) 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services);

(5) 25 TAC Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services);

(6) 25 TAC Chapter 417, Subchapter K (relating to Abuse, Neglect and Exploitation in TDMHMR Facilities); and

(7) 22 TAC Chapter 174, Subchapter B (relating to Mental Health Services).

(h) A CSU physician is prohibited from administering:

(1) electroconvulsive therapy, a treatment in which controlled, medically applied electrical current results in a therapeutic seizure, usually attenuated by anesthesia and muscle relaxants; and

(2) a chemical or gaseous agent used to induce a seizure for therapeutic purposes, instead of, or as a substitute for, electroconvulsive therapy.

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

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For further information, please call: (512) 838-4346



DIVISION 2. ADMISSION

26 TAC §§306.51, 306.53, 306.55, 306.57, 306.59

STATUTORY AUTHORITY

The new sections 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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A, which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

§306.51. Admission Criteria.

A CSU must develop and implement written admission criteria that:

- (1) the CSU medical director approves;
- (2) uniformly applies to all individuals;
- (3) permits the voluntary admission of an individual only if the following criteria are met:

(A) the individual is authorized to do so in accordance with Texas Health and Safety Code §572.001;

(B) the individual has a mental illness or SED;

(C) the services provided in the CSU may reduce the individual's acute symptoms; and

(D) the CSU provides clinically appropriate environmental restrictions and levels of monitoring, described in §306.87 of this subchapter (relating to Protection of an Individual Receiving Crisis Stabilization Unit Services), that:

(i) ensures the safety of the individual; and

(ii) prevent the individual from causing serious harm to self or others;

(4) prevents voluntary admission of an individual who:

(A) is not authorized to request admission in accordance with Texas Health and Safety Code §572.00 or does not have the capacity to consent to diagnosis, observation, care and treatment, as determined by a physician;

(B) presents to the CSU for an emergency detention preliminary examination, in accordance with Texas Health and Safety Code §573; and

(C) presents to the CSU on an order of protective custody or who has been committed to court-ordered inpatient mental health treatment in accordance with Texas Health and Safety Code, Chapter 574;

(5) prevents voluntary or involuntary admission of an individual who:

(A) requires specialized care not available at the CSU;

or
(B) has a physical medical condition that is unstable and could reasonably be expected to require immediate inpatient treatment for the condition;

(6) allows temporary acceptance of an individual for whom an emergency detention application is filed, or for whom a peace officer has detained, by:

(A) temporarily accepting an individual for preliminary examination for whom an application of detention has been filed initiating an emergency detention proceeding in accordance with Texas Health and Safety Code §573.021(a); or

(B) filing an application and obtaining a written order of protective custody as part of an individual's evaluation for court-ordered Inpatient Mental Health Services in accordance with Texas Health and Safety Code Chapter 574, Subchapter B;

(7) includes a process for attempts to gain consent for administration of psychoactive medications from an individual, and an individual's LAR or adult caregiver, as required by applicable law and rule.

§306.53. Pre-admission Screening and Assessment.

(a) Pre-admission screening and assessment.

(1) Before admission to a CSU, an individual must meet clinical criteria for admission, as determined by pre-admission screening and assessment.

(2) An individual who voluntarily presents to the CSU may leave the CSU at any time during the pre-admission screening and assessment process before the individual's admission.

(3) Pre-admission screening and assessment of an individual must:

(A) occur either in the CSU or in the community at any location where mental health crisis services are provided; and

(B) be provided by a QMHP-CS or LPHA trained in accordance with HHSC screening and assessment requirements policy and displaying competency in all domains of crisis screening and assessment in accordance with §301.331(b) of this title (relating to Competency and Credentialing).

(b) CSU screening and assessment policy. CSU screening and assessment policy must include a process for:

(1) accessing an individual's community-based screening and assessment; and

(2) conducting CSU screenings that address the criteria for immediate:

- (A) assessment of risk of deterioration and danger to self and others;
- (B) medical screening and assessment; and
- (C) psychiatric examination;

(3) ensuring an individual who is waiting for a physician examination remains in a location that is determined to be clinically appropriate and available; and

(4) ensuring that an individual who presents to a CSU for pre-admission screening and assessment is afforded the protections in §306.87 of this subchapter (relating to Protection of an Individual receiving Crisis Stabilization Unit Services).

(c) Screening. Pre-admission screening identifies the acuity of the individual's crisis episode and determines the need for further assessments, including assessments to determine risk of deterioration and immediate danger to self and others, in accordance with Texas Health and Safety Code §572.0025(f) and §573.021. The initial screening of an individual must lead to:

- (1) immediate and appropriate referrals; and
- (2) documentation that incorporates the following domains:
 - (A) suicide risk screening;
 - (B) homicide risk screening; and
 - (C) risk of deterioration.

(d) Assessment. If a pre-admission screening indicates an individual requires immediate assessment to determine risk of deterioration and immediate danger to self and others, the assessment must be conducted with the individual, either in person or through the use of telemedicine medical services or telehealth services in accordance with 22 TAC §174.9(2) (relating to Provision of Mental Health Services), and must include:

- (1) a suicide assessment that documents current and past suicide risks regarding suicidal ideation, plans, and past suicide attempts;
- (2) a psychosocial assessment that includes historical and current information including identification of social, psychological, environmental, and cultural factors that may be contributing to the emergency; and
- (3) a mental health assessment, documenting symptomology, functionality, historical and current diagnosis, and treatment for mental illnesses or serious emotional disturbances and, when available:
 - (A) a review of records of past treatment;
 - (B) a review of history from collateral sources as permitted by Health Insurance Portability and Accountability Act;
 - (C) a consult with current healthcare providers;
 - (D) a review of history of previous treatment and the response to that treatment, including a record of dose, response, side effects and adherence to past psychiatric medications; and
 - (E) an up-to-date record of all medications currently prescribed, and the name of the physician or provider with prescriptive authority.

(e) Physician examination. If a pre-admission assessment indicates an individual requires immediate physician examination to de-

termine clinical need for CSU admission, the examination may not be delegated to a non-physician, in accordance with Texas Health and Safety Code §572.0025(f), and:

(1) must be conducted with the individual, either in person or through telemedicine medical services, in accordance with Texas Health and Safety Code §572.0025(f) and §573.021; and

(2) must include:

(A) a physical examination consisting of an assessment for medical stability; and

(B) a psychiatric examination.

§306.55. *Voluntary Admission Criteria and Intake Process.*

(a) CSU staff members, trained in accordance with §306.83(h) - (i) of this subchapter (relating to Staff Training), must conduct the intake and admission process in accordance with Texas Health and Safety Code §572.0025(e) and §572.0025(h)(3).

(b) Voluntary admission into a CSU may be requested by:

(1) an individual 16 years of age or older, in accordance with Texas Health and Safety Code §572.001;

(2) the parent, managing conservator, or guardian of an individual younger than 18 years of age, in accordance with Texas Health and Safety Code §572.001 or Texas Family Code Chapter 35A;

(3) the adult caregiver of an individual, who has obtained an order under Texas Family Code Chapter 35A when the individual is younger than 18 years of age; or

(4) an individual with capacity to consent.

(c) A request for admission must be made in accordance with Texas Health and Safety Code §572.001 and must:

(1) be in writing and signed by the individual, and the individual's parent, adult caregiver, or LAR; and

(2) include a statement that the individual:

(A) has capacity to consent to the administration of psychoactive medication, administered in accordance with Texas Health and Safety Code §576.025;

(B) agrees to voluntarily remain in the CSU until discharge; and

(C) consents to diagnosis, observation, care and treatment until the earlier of one of the following occurrences:

(i) the discharge of the individual; or

(ii) the individual leaves the CSU after a request for discharge is made, in accordance with Texas Health and Safety Code §572.004.

(d) Voluntary admission occurs only if:

(1) a request for admission is made in accordance with subsection (c) of this section;

(2) the individual receives pre-admission screening and assessment, in accordance with the CSU's written policies and procedures, to determine if a physician admission examination is required:

(A) if the pre-admission screening and assessment is conducted by a physician, the physician may conduct the pre-admission screening and assessment as part of the physician admission examination referenced in §306.53(d) of this division (relating to Pre-admission Screening and Assessment); and

(B) if the QMHP-CS or LPHA conducting pre-admission screening and assessment determines:

(i) the individual does not need a physician admission examination, then the CSU may not admit the individual and must refer the individual to alternative services, as appropriate and available, including LMHA, LBHA, or LIDDA crisis services; or

(ii) the individual does need a physician-admission examination, a physician must conduct an admission examination of the individual before CSU admission;

(3) a physician in accordance with Texas Health and Safety Code §572.0025 (f):

(A) conducts either in person or through telemedicine medical services, or consults with a physician who conducted, a physical assessment and psychiatric admission examination within 72 hours before or 24 hours after admission, as described in §306.53 of this division (relating to Pre-Admission Screening and Assessment), and may not delegate the examination to a non-physician; and

(B) provides an admission order;

(i) in writing and signed by the issuing physician; or

(ii) if the order is provided orally or, if the electronic order is unsigned, an original signed order must be provided to the facility within 24 hours;

(4) the administrator or administrator's designee has signed a written statement agreeing to admit the individual, in accordance with Texas Health and Safety Code §572.0025; and

(5) a CSU staff member, trained in accordance with §306.83(i) of this subchapter, completes intake procedures in accordance with Texas Health and Safety Code §572.0025(e) and §572.0025(h)(3), that includes:

(A) obtaining relevant information about the individual, including information about finances, insurance benefits, and advance directives;

(B) explaining, orally and in writing, the individual's rights in a language and format easily understandable to the individual, or the individual's LAR or adult caregiver, as applicable;

(C) explaining, orally and in writing, the CSU's services and treatment as they relate to the individual;

(D) informing the individual, orally and in writing, of the existence, telephone number, and address of the protection and advocacy system established in Texas;

(E) informing the individual of the availability of information and assistance from the Ombudsman by contacting the Ombudsman at 1-800-252-8154 or online at hhs.texas.gov/ombudsman, and the Health Facility Licensing complaints line at 1-888-973-0022; and

(F) determining whether the individual comprehends the information provided in accordance with subparagraphs (B) - (E) of this paragraph.

(e) An individual who is admitted to a CSU before the physical assessment and psychiatric admission examination is conducted must be discharged by the physician immediately if the physician conducting the physical assessment and psychiatric examination of the individual determines the individual does not meet the clinical standards to receive inpatient mental health services, in accordance with Texas Health and Safety Code §572.0025(f-1).

(f) A CSU that discharges an individual under the circumstances described in (e) of this section may not bill the individual or the individual's third-party payor for the temporary admission of the individual to the CSU, in accordance with Texas Health and Safety Code §572.0025(f-2).

§306.57. *Involuntary Admission Criteria and Intake Process.*

(a) Criteria for involuntary admission under order of emergency detention. In accordance with Texas Health and Safety Code §573.021, a CSU administrator may accept an individual for a preliminary examination who is:

(1) apprehended, and transported to the CSU by a peace officer, in accordance with Texas Health and Safety Code §573.001(a) and §573.005; or

(2) an adult who is transported to the CSU by the individual's family member or LAR in accordance with Texas Health and Safety Code §573.003.

(b) Preliminary examination under order of emergency detention. A physician must conduct an individual's preliminary examination in accordance with Texas Health and Safety Code §573.021 and as described in §306.53(d) of this division (relating to Pre-admission Screening and Assessment). The individual's preliminary examination must:

(1) occur as soon as possible, but no later than 12 hours after:

(A) the individual is apprehended by the peace officer;

or

(B) the individual's LAR transports the individual to the CSU for emergency detention; and

(2) include:

(A) an assessment for medical stability; and

(B) a psychiatric examination to determine if the individual meets the criteria described in the emergency detention requirements listed in subsection (c) of this section.

(c) Requirements for emergency detention. When clinically indicated, a CSU physician may initiate an emergency detention proceeding in accordance with Texas Health and Safety Code §572.004(d). A CSU physician may admit an individual for emergency detention in accordance with Texas Health and Safety Code §573.022(a)(2), only if:

(1) a physician determines from the preliminary examination that:

(A) the individual has a mental illness;

(B) the individual evidences a substantial risk of serious harm to self or others;

(C) the described risk of harm is imminent unless the individual is immediately detained; and

(D) emergency detention is the least restrictive means by which the necessary detention may be accomplished;

(2) a physician makes a written statement, in accordance with Texas Health and Safety Code §573.022 that:

(A) documents the determination described in paragraph (1) of this subsection; and

(B) describes:

SED;

(ii) the specific risk of harm to self or others the individual evidences, demonstrated either by behavior or evidence of severe emotional distress;

(iii) the deterioration of mental condition to the extent that the individual cannot remain at liberty; and

(iv) the detailed information on which the physician based the determination described in paragraph (1) of this subsection;

(3) the physician writes an order admitting the individual for emergency detention based on the determination described in paragraph (1) of this subsection; and

(4) the individual meets the CSU's admission criteria, as required by §306.51 of this division (relating to Admission Criteria).

(d) Release of an individual from emergency detention.

(1) A CSU administrator, or administrator's designee, must release an individual accepted for a preliminary examination if:

(A) a preliminary examination of the individual has not been conducted within 12 hours, in accordance with Texas Health and Safety Code §573.021; or

(B) the individual is not admitted to the CSU under order of emergency detention on completion of the preliminary examination in accordance with Texas Health and Safety Code §573.023(a).

(2) A CSU administrator, or administrator's designee, must release an individual determined ineligible for admission under emergency detention in accordance with the requirements in Texas Health and Safety Code §576.007. Before releasing an individual, the CSU must:

(A) make a reasonable effort to notify the individual's LAR, if applicable, and any other person authorized by the individual of the individual's release;

(B) document the individual's refusal of notification in the individual's medical record, if applicable; and

(C) coordinate with the individual, the individual's LAR, if applicable, or the apprehending county to arrange the individual's transportation after release, in accordance with Texas Health and Safety Code §573.024(a) - (d), to:

(i) the location of the individual's apprehension;

(ii) the individual's residence in this state; or

(iii) another suitable location identified by the individual or LAR, if applicable.

(e) Intake under Emergency Detention. A CSU staff member, trained in accordance with §306.83(h) - (i) of this subchapter (relating to Staff Training), must:

(1) conduct the intake of an individual as soon as possible, but no later than 24 hours after the time an individual is apprehended for emergency detention, as described in §306.55 of this division (relating to Voluntary Admission Criteria and Intake Process); and

(2) advise the individuals of their rights and determine whether the individual comprehends the rights for individuals apprehended, detained, or transported for emergency detention provided in accordance with Texas Health and Safety Code §573.025 and consent rights and information described in §306.51 and §306.55 of this division, and if the staff member determines that the individual:

(A) comprehends the information, the CSU must document in the individual's medical record the reasons for such determination; or

(B) does not comprehend the information, the staff member must:

(i) repeat the explanation to the individual daily within 24-hour intervals until the individual demonstrates comprehension of the information or is discharged, whichever occurs first; and

(ii) document in the individual's medical record the individual's response to each explanation and whether the individual demonstrated comprehension of the information.

(f) Criteria for involuntary admission under an order of protective custody.

(1) When clinically indicated, a CSU physician may initiate an application to request an order of protective custody of an individual in accordance with Texas Health and Safety Code §574.021.

(2) A CSU physician may admit an individual under an order of protective custody only if a court has issued a protective custody order in accordance with Texas Health and Safety Code §574.022.

(g) Intake under order of protective custody.

(1) A CSU staff member trained in accordance with §306.83(h) - (i) of this subchapter:

(A) must conduct an intake of an individual, as described in §306.55(d)(5)(A) - (D) and §306.55(d)(5)(F) of this division, as soon as possible, but no later than 24 hours after the time an individual is accepted for protective custody; and

(B) advise the individual of their rights in accordance with Texas Health and Safety Code §573.0025 and determine whether the individual comprehends the rights and consent information described in §306.51 of this division and §306.55(d)(5) of this division.

(2) If the CSU staff member determines that the individual:

(A) comprehends the information, the staff member must document in the individual's medical record the reasons for such determination; or

(B) does not comprehend the information, the staff member must:

(i) repeat the explanation to the individual daily until the individual demonstrates comprehension of the information or is discharged, whichever occurs first; and

(ii) document in the individual's medical record the individual's response to each explanation and whether the individual demonstrated comprehension of the information.

(3) A CSU staff member is not required to conduct another intake if the intake was conducted when the individual was admitted, or within 24 hours before the issuance of the order of protective custody.

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

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DIVISION 3. SERVICE REQUIREMENTS

26 TAC §§306.61, 306.63, 306.65, 306.67

STATUTORY AUTHORITY

The new sections 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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A, which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

§306.61. Crisis Stabilization Unit Medical Services.

(a) A CSU physician, or physician-delegated PA or APRN, must provide an individual with the medical services documented in the individual's recovery or treatment plan developed in accordance with §306.65 of this division (relating to Crisis Stabilization Services and Recovery or Treatment Planning).

(b) A CSU must have a medical director who directs, monitors, and evaluates the psychiatric services provided.

(c) A CSU administrator, or administrator's designee, must assign a treating physician to each individual and document the assignment in the individual's medical record at the time the CSU administrator, or administrator's designee, admits the individual.

(d) A physician, PA, APRN, or RN must perform an individual's initial physical health assessment within 24 hours after the individual's presentation, as ordered. The physical assessment includes:

(1) an evaluation and documentation of the presence or absence of cognitive signs suggesting delirium and the need for emergency intervention;

(2) a general medical history that addresses conditions that may affect the individual's current condition, including a review of symptoms focused on conditions (such as a history of trauma) that may present with psychiatric symptoms or cause cognitive impairment;

(3) a review of medical conditions that may cause similar psychiatric symptoms or complicate the individual's condition; and

(4) access to phlebotomy and laboratory results.

(e) A physician must conduct an initial psychiatric evaluation of an individual, including:

(1) a description of the individual's medical history;

(2) a determination of the individual's mental status;

(3) a description of the presenting problems, the onset, and the duration and severity of mental health or substance use disorder symptoms leading to CSU admission;

(4) an estimation of the individual's intellectual functioning, memory functioning and orientation;

(5) a description of the individual's strengths and needs; and

(6) the diagnoses of the individual's mental illness, SED, and if applicable, any substance use disorders, ID, or DD.

(f) A physician, or physician-delegated PA or APRN, must re-evaluate the individual once every 96 hours or more often as clinically indicated after the initial examination described in subsection (e) of this section. This re-evaluation information may be included in the physician's, APRN's, or PA's discharge summary if the individual is discharged within the initial 96-hour period, as described in §306.71(b) of this subchapter (relating to Discharge Planning).

(g) A CSU medical director must ensure, as appropriate under the circumstances:

(1) the provision of medical services to an individual in response to an emergency medical condition in accordance with the plan required by §306.89 of this subchapter (relating to Crisis Stabilization Unit Response to an Emergency Medical Condition);

(2) the provision of other medical services, as needed by the individual;

(3) the referral of the individual to an appropriate health care provider; or

(4) the transfer of the individual to a health care entity that can provide the medical services.

(h) At least one physician, or physician-delegated PA or APRN, must be available 24 hours a day, 365 days a year, either in person or by telecommunication, to provide medical consultation to staff members in accordance with §306.85 of this subchapter (relating to Minimum Staffing Requirements).

§306.67. Additional Standards of Care for Children and Adolescents.

(a) In addition to the service requirements in this division, a child or adolescent must receive additional assessments, including a developmental assessment and history of trauma assessment, performed by an LPHA with appropriate training and experience in the assessment and treatment of children in a crisis setting. The assessments must:

(1) be administered in person or through telehealth or telemedicine medical services; and

(2) include the individual's parents, LAR, or adult caregiver, as applicable and as clinically appropriate according to the child's or adolescent's age, functioning, and current living situation.

(b) Services delivered to a child or an adolescent must be:

(1) age-appropriate;

(2) developmentally appropriate;

(3) trauma-informed; and

(4) consistent with the child's or adolescent's academic development.

(c) Children must be separated from adolescents, based on age and developmental needs, unless there is clinical or developmental justification in the child or adolescent's medical record. Both children and adolescents must be separated from adults, required in §306.87(d) of this subchapter (relating to Protection of an Individual Receiving Crisis Stabilization Unit Services).

(d) Education services must be available as required by the Texas Education Agency.

(e) When a child or adolescent surpasses the maximum age for their current unit or CSU, the unit or CSU administrator, or adminis-

trator's designee, must transition the child or adolescent to a different age-appropriate unit or CSU.

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

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DIVISION 4. DISCHARGE

26 TAC §§306.71, 306.73, 306.75, 306.77, 306.79

STATUTORY AUTHORITY

The new sections 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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A, which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

§306.71. *Discharge Planning.*

(a) A QMHP-CS or LPHA must begin discharge planning for an individual at the time of the individual's admission.

(1) Discharge planning must involve the individual, the IDT, the individual's LAR or adult caregiver, as applicable, and any other person authorized by the individual and the individual's adult caregiver or LAR if applicable, unless clinically contraindicated.

(2) Discharge planning must be provided in accordance with §510.41(m)(3) of this title (relating to Facility Functions and Services) and include:

(A) the IDT recommendations for services and supports, including placement needs, that should be provided after discharge;

(B) the IDT arrangements for the recommended services and supports;

(C) a PASRR screening, as required by paragraph (3) of this subsection; and

(D) the IDT post-discharge care information provided in a language and format easily understandable to the individual, and the individual's LAR or adult caregiver, if applicable.

(3) An individual considered for discharge from the CSU to a Medicaid-certified nursing facility must have a PASRR Level I screening completed, in accordance with the Code of Federal Regulations, Title 42, Part 483, Subpart B (relating to Requirements for Long-Term Care Facilities) before discharge; and

(4) if the screening indicates that the individual has a mental illness, ID, or DD, the CSU staff member coordinating the

individual's transfer must contact and arrange for the designated LMHA, LBHA, or LIDDA to conduct a PASRR Level II evaluation of the individual before CSU discharge, in accordance with Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(b) The individual's treating physician must prepare a written discharge summary that includes:

(1) a description of the individual's treatment at the CSU and the response to that treatment;

(2) a description of the individual's condition at discharge;

(3) a description of the individual's placement after discharge;

(4) a description of the services and supports the individual will receive after discharge;

(5) a final diagnosis based on the current edition of the *Diagnostic and Statistical Manual of Mental Disorders*;

(6) a description, including dosage instructions, of the prescribed medications the individual will need until the individual is evaluated by a physician, or provider with prescriptive authority; and

(7) the name of the person or entity responsible for providing and paying for the medication referenced in paragraph (6) of this subsection, which is not required to be the CSU.

(c) The CSU staff member coordinating the individual's discharge must provide a copy of the discharge summary as authorized by state and federal law, to LMHA, LBHA, LIDDA, or other community providers and consult with them to ensure continuity of care for the individual upon discharge from the CSU.

(d) The CSU staff member coordinating the individual's discharge must contact and coordinate with the individual's existing service providers and in accordance with the Health Insurance Portability and Accountability Act or other law prior to the individual's discharge.

(e) If the individual, or the individual's LAR, adult caregiver, or others authorized by the individual, refuse to participate in the discharge planning, the CSU staff member coordinating the individual's discharge must document the circumstances of the refusal in the individual's medical record.

(f) If extremely hazardous weather conditions exist or a disaster occurs, the physician may request the presiding judge or magistrate of a court that has jurisdiction over proceedings brought in accordance with Texas Health and Safety Code Chapter 574 to extend the period during which the individual may be detained in accordance with Texas Health and Safety Code §572.004(e).

§306.73. *Discharge Notices.*

(a) The CSU staff member coordinating the individual's discharge must notify the parent, LAR, or adult caregiver of the pending discharge of a child or adolescent, unless clinically contraindicated, in accordance with §568.82(b) of this title (relating to Discharge Notices and Release of Minors). If the treatment team believes notifying the individual's parent, LAR, or adult caregiver is clinically contraindicated, CSU staff must notify Texas Department of Family Protective Services.

(b) In accordance with Texas Health and Safety Code §576.007, before discharging any adult, the CSU staff member coordinating the individual's discharge must make a reasonable effort to notify the individual's LAR, adult caregiver, and others authorized by the individual and LAR or adult caregiver, of the discharge if the individual, LAR, or adult caregiver grants permission for the notification.

(c) Upon discharge, the CSU staff member coordinating the individual's discharge must provide the individual with written notification of the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, in accordance with 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services) and required by Texas Health and Safety Code §576.008.

§306.75. *Discharge of a Voluntarily-Admitted Individual.*

(a) In accordance with 25 TAC Chapter 404, Subchapter E, all individuals voluntarily admitted to a CSU for treatment of mental illness or SED have the right to be discharged within four hours of a request for release unless the individual's treating physician, (or another physician, if the treating physician, is not available) determines that there is cause to believe the individual might meet the criteria for emergency detention.

(b) When a CSU staff member is informed that a voluntarily-admitted individual wants to leave the CSU, or the individual's LAR or adult caregiver requests the individual be discharged, the CSU staff member must, in accordance with Texas Health and Safety Code §572.004 and 25 TAC Chapter 404, Subchapter E:

(1) inform the individual, and the individual's LAR or adult caregiver, if applicable, that the request must be in writing and signed, timed, and dated by the requestor; if the request for discharge is verbal, then the four hours begins at the time of a verbal request and must be documented in the medical record. Inform the individual or the individual's LAR of the potential four-hour delay from the time of the verbal request;

(2) assist the individual as soon as possible, with documenting the verbal request for discharge or creating a written request for discharge and presenting the request to the individual for the individual's signature; and

(3) inform the LAR or adult caregiver to submit written approval to the CSU administrator, or administrator's designee, for the CSU treating physician to discharge an individual younger than 18 years of age if the LAR or adult caregiver signed for the individual's admission to the CSU.

(c) If a voluntarily-admitted individual, or the individual's LAR or adult caregiver, if applicable, submits a verbal or written request for discharge from a CSU, the CSU staff member must:

(1) immediately notify the treating physician, or another CSU physician if the treating physician is not available, of the request after the request becomes known to the CSU; and

(2) file the request in the individual's medical record.

(d) If the physician, notified in subsection (b) of this section, and in accordance with Texas Health and Safety Code §572.004, does not have reasonable cause to believe that the individual may meet the criteria for court-ordered inpatient mental health services or emergency detention, the treating physician must discharge the individual within the four-hour time frame described in subsection (b) of this section.

(e) If the physician, notified in subsection (b) of this section, and in accordance with Texas Health and Safety Code §572.004, has reasonable cause to believe that the individual may meet criteria for court-ordered inpatient mental health services or emergency detention, the physician must examine the individual as soon as possible, but no later than 24 hours after the individual requests discharge from the CSU.

(1) If the physician conducting the examination described in this subsection determines that the individual does not meet criteria

for court-ordered inpatient mental health services or emergency detention, the treating physician must discharge the individual upon completion of the examination.

(2) If a physician does not examine an individual for involuntary treatment criteria within 24 hours after the individual requests CSU discharge, the treating physician must discharge the individual even if the physician believes the individual may meet criteria for court-ordered inpatient mental health services or emergency services.

(f) If the physician conducting the examination described in subsection (e) of this section determines that the voluntarily-admitted individual meets the criteria for court-ordered inpatient mental health services or emergency detention, a CSU physician must, by 4:00 p.m. on the next business day, in accordance with Texas Health and Safety Code §572.004:

(1) file an application for court-ordered inpatient mental health services or emergency detention within 24 hours after the individual requests discharge from the CSU, and obtain a court order for further detention of the individual; or

(2) discharge the individual.

(g) If the CSU treating physician intends to detain a voluntarily-admitted individual and file an application to obtain a court order for further detention of the individual, a physician must in accordance with Texas Health and Safety Code §572.004:

(1) notify the individual of such intention; and

(2) document the reasons for the decision to detain the individual in the individual's medical record.

(h) A CSU treating physician is not required, in accordance with Texas Health and Safety Code §572.004, to complete the discharge process described in this section if the voluntarily-admitted individual makes a written statement to withdraw the request for discharge.

§306.77. *Maximum Length of Stay for a Voluntarily-Admitted Individual.*

Except as allowed by paragraph (3) of this section, a CSU physician must discharge a voluntarily-admitted individual on the 14th day after the individual's admission, unless:

(1) the individual's treating physician orders the individual's discharge before the 14th day;

(2) the individual's treating physician orders the individual's transfer to other treatment or services, in accordance with §306.91 of this subchapter (relating to Transfers);

(3) a physician, or physician-delegated PA or APRN, documents in the individual's medical record the medical necessity and clinical rationale for extending the length of stay beyond 14 days; or

(4) an individual under 18 years of age was admitted under an order of Temporary Authorization, issued in accordance with Texas Family Code Section §35A.005(d), in which case the individual must be discharged by the tenth day after the date the order for temporary authorization is issued.

§306.79. *Discharge of an Involuntarily-Admitted Individual.*

(a) Discharge from emergency detention.

(1) Except as provided by §306.59 of this subchapter (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code §573.021 and §573.023, an involuntarily-admitted individual under emergency detention must be immediately discharged from a CSU if:

(A) the administrator or the administrator's designee determines, based on a physician's determination, that the individual no longer meets the criteria described in subsection (b)(1) of this section; or

(B) except as provided in subsection (b) of this section, 48 hours have lapsed from the time the individual was presented to the CSU and the CSU has not obtained a court order for the individual's further detention.

(2) In accordance with Texas Health and Safety Code §573.021(b), if the 48-hour period described in paragraph (1)(B) of this subsection ends on a Saturday, Sunday, or legal holiday, or before 4:00 p.m. on the next business day after the patient was presented to the CSU, the involuntarily-admitted individual may be detained until 4:00 p.m. on such business day.

(3) In accordance with Texas Health and Safety Code §573.021(b), the 48-hour custody period described in paragraph (1)(B) of this subsection includes any time during which the individual in custody spends waiting in the CSU for medical care before receiving a preliminary examination.

(b) Discharge under protective custody order. Unless an involuntarily-admitted individual consents to voluntary treatment, a CSU physician must immediately discharge the individual under an order of protective custody if:

(1) the CSU administrator or designee determines that, based on a physician's determination, the individual no longer meets the criteria for protective custody described in Texas Health and Safety Code §574.022;

(2) the CSU administrator or designee does not receive notice that the individual's continued detention is authorized after a probable cause hearing held within the time frame prescribed by Texas Health and Safety Code §574.025;

(3) a final order for court-ordered inpatient mental health services has not been entered within the time frame prescribed by Texas Health and Safety Code §574.005; or

(4) an order to release the individual is issued in accordance with Texas Health and Safety Code §574.028.

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DIVISION 5. OPERATIONAL REQUIREMENTS

26 TAC §§306.81, 306.83, 306.85, 306.87, 306.89, 306.91, 306.95

STATUTORY AUTHORITY

The new sections 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 Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A, which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

§306.81. *Medical Record.*

(a) A medical record must be maintained for each individual, in accordance with §510.41(g) of this title (relating to Facility Functions and Services). The medical record must include:

(1) a signed voluntary commitment, signed order of protective custody or police officer's warrant, or a notice of detention;

(2) a signed informed consent to treatment, including medication, or documentation of the individual's refusal;

(3) documentation of the reasons the individual, LAR, family members, or other adult caregivers state the individual was admitted to the CSU;

(4) justification for each mental illness or serious emotional disturbance diagnosis and any substance use disorder diagnosis;

(5) the level of monitoring assigned and implemented for the individual, including any changes to the level of monitoring;

(6) the individual's written recovery or treatment plan;

(7) the name of the individual's treating physician;

(8) written findings of the physical examination;

(9) written findings of the psychiatric evaluation, the nursing assessment, and any other assessment of the individual conducted by a staff member, including any re-evaluation or re-assessment;

(10) a summary of any revisions made to the written recovery or treatment plan;

(11) the progress notes for the individual as described in subsection (b) of this section;

(12) documentation of the individual's monitoring by UPs, LVNs, and any assigned staff members responsible for such monitoring, including observations of the individual at pre-determined intervals;

(13) documentation of the discharge planning activities;

(14) the discharge summary; and

(15) documentation of the individual's medical, mental health, and substance use history.

(b) Progress notes are required for each individual. A physician, a physician-delegated PA or APRN, or RN and any assigned staff members providing services to an individual must document the individual's progress and response to treatment provided in the individual's recovery or treatment plan.

§306.83. *Staff Training.*

(a) In accordance with §301.331 of this title (relating to Competency and Credentialing), a CSU administrator, or administrator's designee, must:

(1) ensure that services are provided by staff members who are operating within their scope of their license, credentialing, job description, or contract specification, and in accordance with applicable

state law and rule, including 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services);

(2) define competency-based expectations for each CSU staff position and ensure each staff member receives initial training before the staff member assumes responsibilities required by the CSU and annually throughout the staff member's employment with the CSU; and

(3) require all staff members to demonstrate required competencies delineated in §301.331(a)(3)(A) of this title, including:

(A) identifying, preventing, and reporting abuse, exploitation, and neglect of individuals and unprofessional or unethical conduct, in accordance with 25 TAC §417.515 (relating to Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation);

(B) an individual's dignity and rights, in accordance with 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services); and

(C) protection of an individual's confidential information, in accordance with relevant state and federal laws, including 42 Code of Federal Regulations, Part 2.

(b) All UPs and any direct care staff members providing services to an individual must receive training and instruction in the following topics and demonstrate critical competencies delineated in §301.331(a)(3)(B) of this title, before the staff member assumes responsibilities required by the CSU and annually throughout the staff member's employment with the CSU:

(1) the implementation of the interdisciplinary treatment program for each individual before performing direct care duties without direct supervision; and

(2) the specialized needs of child, adolescent, and geriatric individuals, and individuals diagnosed with an ID or DD.

(c) An RN, LVN, and UP must receive training in:

(1) monitoring for individual safety; and

(2) infection control.

(d) A CSU nursing supervisor or designee must provide orientation training to a nursing staff member when the CSU nursing supervisor initially assigns the staff member to a unit on either a temporary or long-term basis.

(1) The orientation must include a review of:

(A) the location of equipment and supplies on the unit;

(B) the staff member's responsibilities on the unit;

(C) relevant information about individuals on the unit;

(D) relevant schedules of staff members and individuals;

and

(E) procedures for contacting the staff member's supervisor.

(2) A CSU administrator, or administrator's designee, must document the provision of orientation to nursing staff.

(e) A staff member routinely providing treatment to, working with, or providing consultation about a geriatric individual must receive training in the social, psychological, and physiological changes associated with aging.

(f) A QMHP-CS or LPHA whose responsibilities include specialized services and tasks, including screening and assessment, must receive training in, and display specialty competencies for, tasks delin-

ated in §301.331(a)(3)(C) of this title, before providing services for individuals and annually throughout the QMHP-CS's employment or association with the CSU.

(g) QMHP-CS and LPHA training must include instruction, including:

(1) age and developmentally appropriate clinical assessment, intervention, and engagement techniques;

(2) use of telemedicine equipment;

(3) developing and implementing an individualized treatment or recovery plan;

(4) developing and implementing an individualized discharge plan and referring an individual to local community resources;

(5) appropriate actions to take in a crisis; and

(6) clinical specialties directly related to the services to be performed.

(h) In accordance with Texas Health and Safety Code §572.0025(e), any staff member whose responsibilities include conducting an individual's intake must receive at least eight hours of intake training:

(1) before conducting an intake; and

(2) annually throughout the staff member's employment or association with the CSU.

(i) For any staff member whose responsibilities include conducting an individual's intake, intake training must include instruction regarding:

(1) obtaining relevant information about the individual, including information about finances, insurance benefits, and advance directives;

(2) explaining, orally and in writing, the individual's rights;

(3) explaining, orally and in writing, the CSU's services and treatment as they relate to the individual;

(4) informing the individual in writing, of the existence, telephone number, and address of the protection and advocacy system established in Texas;

(5) informing the individual about the availability of information and assistance from the Ombudsman by contacting the Ombudsman at 1-800-252-8154 or online at hhs.texas.gov/ombudsman, and the Health Facility Licensing complaints line at 1-888-973-0022; and

(6) determining whether the individual comprehends the information provided in accordance with paragraphs (2) - (5) of this subsection.

(j) A staff member who may initiate a restraint or seclusion must receive training in, and demonstrate competency in, performing such interventions in accordance with applicable law and rule, including 25 TAC §415.260 (relating to Initiation of Restraint or Seclusion in a Behavioral Emergency), use of de-escalation techniques, and reporting requirements.

(k) A staff member providing direct care must earn and maintain certification in Basic Life Support provided by the American Heart Association or the American Red Cross:

(1) before assuming responsibilities at the CSU; or

(2) no later than 30 days after the staff member is hired by the CSU if another staff member who has such certification is phys-

ically present and on duty on the same unit on which the uncertified staff member is on duty.

(l) A CSU administrator, or administrator's designee must:

(1) document when a staff member has successfully completed a training required by this section, including:

- (A) the date of the training;
- (B) the length of the training session; and
- (C) the name of the instructor.

(2) Maintain certification or other evidence issued by the American Heart Association or the American Red Cross that a staff member has successfully completed the training in Basic Life Support.

(m) A staff member must perform in accordance with required training and the staff member's credentials.

§306.85. Minimum Staffing Requirements.

(a) A CSU nursing supervisor, or designee, must adhere to nurse staffing requirements delineated in §510.41(c)(8) and (j) of this title (relating to Facility Functioning and Services) and the following parameters when determining minimum staffing plans required by subsections (b) - (d) of this section.

(1) Staff included in the minimum staffing plan must:

- (A) always be physically available while on duty; and
- (B) have job duties that do not prevent ongoing and consistent supervision of individuals receiving crisis stabilization services.

(2) The minimum staffing plan must increase or decrease based on CSU census and acuity, individual level of monitoring and precautions, and developmental level, gender, age, and other individual needs and characteristics of individuals receiving crisis stabilization services.

(3) A staff member on one-to-one supervision of an individual cannot be included in the CSU's minimum staffing plan.

(b) The minimum staffing plan includes:

(1) one physician, preferably a psychiatrist, or physician-delegated PA or APRN, onsite or at minimum immediately available through telecommunication or telephone 24 hours a day, seven days a week;

(2) one LVN or one RN physically present and on duty 24 hours a day, seven days a week, when an individual is present in the CSU;

(3) one RN available onsite within ten minutes after being contacted by a staff member, if an RN is not physically present and on duty when an individual is in the CSU;

(4) one QMHP-CS onsite from 8:00 a.m. to 5:00 p.m., Monday through Friday; and

(5) two UPs onsite 24 hours a day, seven days a week.

(c) A nursing supervisor or an RN charge nurse receiving clinical and administrative consultation from the facility administrator and medical director or on-call physician, APRN, or PA must be available, in person or by telephone, 24 hours a day, seven days a week, to provide clinical oversight to CSU RNs, LVNs, QMHP-CSs, and UPs.

(d) The nursing supervisor or designee must develop and implement a written staffing plan describing the number of RNs, LVNs, and UPs on each unit for each shift, in accordance with subsections (a) and (b) of this section, that meet the following requirements:

(1) The staffing plan must be based on the census, needs, and characteristics of individuals, and acuity of the CSU.

(2) The nursing supervisor or designee must document the nursing supervisor's or designee's determinations regarding the factors described in paragraph (1) of this subsection:

(A) at the time the staffing plan is developed; and

(B) when the nursing supervisor or designee makes any revisions to the staffing plan based on a change in such factors.

(3) A CSU nursing supervisor must retain the staffing plan and the documentation required by paragraph (2) of this subsection for two years.

(4) The nursing supervisor or designee must revise the staffing plan, as necessary.

§306.87. Protection of an Individual Receiving Crisis Stabilization Unit Services.

(a) At the time an individual is admitted, a CSU nursing supervisor or designee must implement the level of monitoring ordered by the physician, or physician-delegated PA or APRN, based on the individual's needs and in accordance with this section, 25 TAC §415.260 (relating to Initiation of Restraint or Seclusion in a Behavioral Emergency), and §415.266 (relating to Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency).

(b) All CSU staff must contribute to the protection of individual's by:

(1) modifying the CSU environment based on the individual's needs, including:

(A) providing furnishings that do not present safety hazards to the individual;

(B) securing or removing objects that are hazardous to the individual;

(C) installing any necessary safety devices; and

(D) making roommate assignments and other decisions affecting the interaction of the individual with other individuals, based on individual needs and vulnerabilities;

(2) monitoring the individual in accordance with the physician's, or physician-delegated PA's or APRN's, order and CSU written policies and procedures; and

(3) documenting the individual's level of monitoring ordered by the physician, or physician-delegated PA or APRN, in the individual's medical record.

(c) A CSU medical director must ensure:

(1) each level of monitoring is defined in the CSU's policies and procedures, including a description of the responsibilities of staff members for each level of monitoring identified; and

(2) implementation of the level of monitoring ordered by the physician, or physician-delegated PA or APRN, based on the individual's needs.

(d) In accordance with Texas Health and Safety Code §321.002, a CSU administrator or administrator's designee, must keep children and adolescents separate from adults.

(e) All CSU staff must maintain an individual's confidential information in accordance with the Health Insurance Portability and Accountability Act rules and 1 TAC Chapter 390, Subchapter A (relating

to Standards Relating to the Electronic Exchange of Health Information). CSU staff must:

(1) be knowledgeable of and obey all current state and federal laws and regulations relating to confidential information regarding the provision of services; and

(2) not disclose confidential information without the express written consent of the individual, and individual's LAR or adult caregiver, if applicable, except as permitted by the Health Insurance Portability and Accountability Act or other law.

(f) Qualified CSU staff must adhere to transportation requirements provided in accordance with 25 TAC §404.156 (relating to Additional Rights of Persons Receiving Residential Mental Health Services at Department Facilities) and Texas Health and Safety Code §574.045 and §574.0455 if the CSU provides transportation.

§306.91. *Transfers.*

(a) A CSU administrator, or administrator's designee, must facilitate an individual's transfer as soon as possible to an appropriate and available inpatient mental health facility, which may include contacting law enforcement to transfer an individual under an emergency detention who has not yet been admitted or obtaining permission from the court that issued the order of protective custody to transfer the individual, as appropriate, if:

(1) a physician, or physician-delegated PA or APRN, determines the individual is at serious risk of harm to self or others in the CSU and the CSU is unable to provide an adequate assurance of safety for the individuals or others in the CSU;

(2) during a 24-hour period, the individual is placed in:

(A) seclusion more than twice or for more than a total of four hours; or

(B) a restraint for more than 60 consecutive minutes; or

(3) the individual becomes the subject of:

(A) an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code §574.034; or

(B) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code §574.035.

(b) A CSU administrator, or administrator's designee, must immediately facilitate an individual's transfer to a general hospital or another health care entity, as appropriate, if the individual:

(1) requires specialized care not available at the CSU; or

(2) has a physical medical condition that is unstable and could reasonably be expected to require inpatient treatment for the condition.

(c) An administrator of a CSU solely serving children and adolescents must immediately facilitate an individual's transfer to an inpatient mental health facility serving adults when the individual:

(1) turns 18 years of age; and

(2) does not meet criteria for discharge from CSU treatment services.

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

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CHAPTER 568. STANDARDS OF CARE AND TREATMENT IN PSYCHIATRIC HOSPITALS

The Texas Health and Human Services Commission (HHSC) adopts new Texas Administrative Code (TAC) Title 26, Chapter 568, concerning Standards of Care and Treatment in Psychiatric Hospitals. The new chapter comprises §§568.1 - 568.5, 568.21 - 568.26, 568.41, 568.61 - 568.67, 568.81 - 568.84, 568.101, 568.121, and 568.141 - 568.144.

New §§568.3, 568.4, 568.22 - 568.24, 568.26, 568.61, 568.67, 568.81, 568.83, 568.84, 568.101, and 568.121 are adopted with changes to the proposed text as published in the January 1, 2021, issue of the *Texas Register* (46 TexReg 103). These rules will be republished.

New §§568.1, 568.2, 568.5, 568.21, 568.25, 568.41, 568.62 - 568.66, 568.82, and 568.141 - 568.144 in Title 26, Chapter 568, concerning Standards of Care and Treatment in Psychiatric Hospitals are adopted without changes to the proposed text as published in the January 1, 2021, issue of the *Texas Register* (46 TexReg 103). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to comply with Senate Bill (S.B.) 1238, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code Chapter 572, regarding Voluntary Mental Health Services, and to relocate the rules to 26 TAC. The rules in 25 TAC Chapter 411, Subchapter J are repealed and published elsewhere in this issue of the *Texas Register*. The new rules are substantially similar to the rules in Chapter 411, but updates have been made to comply with current statute, create consistent training guidelines, correct outdated citations, and update language throughout to reflect the transition to the new title.

S.B. 1238 adjusts the time frame in which a prospective voluntary mental health patient must be examined by a physician from within 72 hours before admission to either within 72 hours before admission or 24 hours after admission. The new rules allow prospective patients to be admitted to an inpatient facility before being examined by a physician. The new rules also allow a person to be discharged immediately if a physician then determines that they do not meet the clinical standards to receive inpatient mental health services.

The rules make minor updates to language throughout the rules, remove outdated citations, delete references to departments and programs that no longer exist, and reflect the transition from Title 25, Health Services, to Title 26, Health and Human Services. The rules update training requirements and citations for abuse, neglect, exploitation, and unprofessional and unethical conduct in facilities to comply with current statute and to create greater clarity regarding these guidelines.

COMMENTS

The 31-day comment period ended February 2, 2021.

During this period, HHSC received comments regarding the proposed rules from four commenters: The Health and Safety Institute (HSI), Disability Rights Texas (DRTx), The Texas Council for Developmental Disabilities (TCDD), and Citizens Commission on Human Rights-Texas (CCHR). A summary of comments relating to the rules and HHSC's responses follows.

Comment: DRTx suggested revising the definition for adult at §568.3(4) to include "or an individual who is under 18 years of age and is or has been married or who has had the disabilities of minority removed for general purposes" in accordance with the current definition at 25 TAC §411.453(4) proposed for repeal.

Response: HHSC declines to revise the rule in response to this comment because Senate Bill 718, 83rd Legislature, Regular Session, 2013, removed these provisions from Health and Safety Code §572.001 and to maintain consistency between these rules and the standards for Crisis Stabilization Units (CSUs) in 26 TAC Chapter 306, Subchapter B.

Comment: DRTx and TCDD provided separate suggestions for revising the definition for inpatient mental health treatment at §568.3(15) to more accurately reflect who can receive residential care

Response: HHSC revised §568.3(15) in response to these comments and to reflect current industry standards.

Comment: DRTx and CCHR suggested revising the definition for legally authorized representative (LAR) at §568.3(17) to narrow the circumstances in which a person may serve as a legal authorized representative (LAR) under this chapter.

Response: HHSC revised §568.3(17) in response to these comments to limit LAR to a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

Comment: DRTx suggested adding "treatment" to the scope of matters for which an LAR is authorized to act on an individual's behalf at §568.3(17)(A).

Response: HHSC revised §568.3(17)(A) in response to this comment.

Comment: DRTx suggested revising the definition of minor at §568.3(28) to include "who is not and has not been married or who has not had the disabilities of minority removed for general purposes" in accordance with the current definition at 25 TAC §411.453(30) proposed for repeal.

Response: HHSC declines to revise the rule in response to this comment because Senate Bill 718, 83rd Legislature, Regular Session, 2013, removed these provisions from Health and Safety Code §572.001 and to maintain consistency between these rules and the standards for CSUs in 26 TAC Chapter 306, Subchapter B.

Comment: DRTx and TCDD suggested adding language to §568.4 to prohibit the use of law enforcement officers or off-duty contracted detention officers to restrain, seclude or transport or guide a person to a room or floor at the psychiatric hospital to prevent situations where a person is further detained by law enforcement after the hospital assessment or charged with an offense related to a behavioral health emergency.

Response: HHSC declines to revise the rule as suggested because doing so may limit a hospital's ability to fill necessary staff positions, which poses a health and safety risk. HHSC notes the hospital is required to train staff appropriately, including training on emergency behavioral health management. The suggested

language may also prevent hospital staff from calling 911 in an emergency that sufficiently warrants law enforcement involvement. Further, HHSC does not have authority to prohibit a peace officer from restraining, secluding or transporting or guiding a person at a hospital, and health and safety may be jeopardized if the language were to be amended as suggested.

To address the commenters' concerns, HHSC revised the rule by adding language to §568.4(g)(3) to clarify the use of law enforcement by a hospital should be limited to situations that sufficiently warrant the need for law enforcement.

Comment: DRTx, TCDD, and CCHR suggested amending §568.4(g) to require hospitals to also comply with 25 TAC Chapter 415, Subchapter A, relating to Prescribing of Psychoactive Medication.

Response: HHSC revised the rule by adding the reference to new §568.4(g)(2) and renumbering the remaining paragraphs in the subsection.

Comment: DRTx and TCDD suggested amending §568.4(h) to require hospitals to be in substantial compliance with Joint Commission standards in accordance with the language in current 25 TAC §411.454(i) proposed for repeal.

Response: HHSC declines to revise the rule in response to these comments, as adopting Joint Commission standards is not required by statute.

Comment: DRTx suggested removing the reference to Texas Health and Safety Code §572.001 at §568.22(a)(1) and replacing it with an explanation of the reference that a request for voluntary admission may be made only "by a legally authorized representative authorized by state law to consent to admission, transfer or discharge" as the TAC is a document for use by the public.

Response: HHSC declines to revise the rule in response to this comment. The reference to Texas Health and Safety Code §572.001 sufficiently clarifies who is authorized under state law to request voluntary admission.

Comment: CCHR and DRTx suggested adding language to §568.22(a) requiring a hospital to verify an individual is a prospective patient's LAR prior to accepting a request for voluntary admission by anyone other than the prospective patient.

Response: HHSC revised §568.22(a)(3) in response to these comments.

Comment: DRTx and TCDD objected to the omission of a section related to the capacity of the individual to consent to voluntary treatment in the published rules and strongly recommended that the new rules retain the language proposed for repeal at 25 TAC §411.461(b).

Response: HHSC revised the rule in response to these comments by amending §568.22 to add the suggested language in subsection (c) and renumbering the rest of the section accordingly.

Comment: CCHR and DRTx suggested adding language to §568.22(f) to allow a patient who presents voluntarily at a hospital to withdraw at any time during the exam and prohibit a hospital from preventing egress.

Response: HHSC revised the rule in response to these comments by adding new subsection §568.22(d). HHSC notes the new subsection is consistent with the language in the CSU standards in 26 TAC §306.53(a)(2).

Comment: DRTx suggested adding language to §568.23(c)(2)(A) to include the requirement that "the written statement required by the physician documentation must state that the prospective patient meets the requirements listed under (C)(1)(A - D)."

Response: HHSC declines to revise the rule in response to this comment as the suggestion is a matter of stylistic preference. The current language in §568.23(c)(2)(A) includes documentation of the requirements in §568.23(c)(1)(A)-(D) as the commenter requested.

Comment: DRTx suggested amending the age requirement in §568.23(d)(3) and §568.23(d)(4) to "younger than 18 years of age" instead of younger than 16 years of age.

Response: HHSC revised §568.23(d)(3)-(4) in response to this comment, because the revision is consistent with this chapter's definitions for minor and adult and other age requirements in this chapter.

Comment: CCHR and DRTx suggested amending §568.23(e)(1)(B) to require a hospital to inform the patient's LAR of the patient's rights.

Response: HHSC agrees a patient's LAR should also be informed of the patient's rights when applicable and revised §568.23(e)(1)(B) in response to these comments.

Comment: DRTx and CCHR suggested adding language to §568.24 to prohibit a hospital from admitting a minor who is not under CPS managing conservatorship under §568.24 unless an order for placement issued in accordance with Texas Family Code Chapter 35 or 55 is presented.

Response: HHSC declines to revise the rule in response to these comments, as the requirement for an order under Texas Family Code Chapter 55 is already included in §568.24(a)(4). HHSC notes Texas Family Code Chapters 35 and 35A are not applicable to this section, as orders under Family Code Chapter 35A do not order mental health services.

Comment: DRTx and CCHR suggested adding language to §568.24(b)(1)(B) requiring a hospital to also inform the LAR of an individual determined to be appropriate for detention after preliminary examination of the individual's rights.

Response: HHSC agrees an individual's LAR should also be informed of the patient's rights when applicable and revised §568.24(b)(1)(B) in response to these comments.

Comment: DRTx suggested adding language to §568.25 to prohibit a psychiatric hospital "from using an off-duty law enforcement officer to assist with monitoring an individual upon admission."

Response: HHSC declines to revise the rule as suggested. HHSC addresses the commenter's concern in the revision to §568.4(g)(3) and its response to comments on that rule.

Comment: DRTx suggested adding language to §568.26 to clarify the requirement that an individual must have the capacity to consent to voluntary treatment by revising the language at §568.26 to include "If a patient does not have the capacity to consent to diagnosis, observation, care and treatment, as determined by a physician, then the hospital may not admit the prospective patient on a voluntary basis. When appropriate, the hospital may initiate an emergency detention proceeding in accordance with Texas Health and Safety Code, Chapter 573, or file an application for court-ordered inpatient mental health ser-

VICES in accordance with Texas Health and Safety Code, Chapter 574."

Response: HHSC declines to revise the rule as suggested. HHSC addresses the commenter's recommendation with the addition of new language regarding capacity to consent in §568.22(c), and such language does not need to be restated in §568.26.

Comment: DRTx and TCDD suggested adding language to §568.41 to clarify that law enforcement should not be used to transport a patient in a medical emergency.

Response: HHSC declines to revise the rules as suggested. HHSC addresses the commenter's concern in the revision to §568.4(g)(3) and its response to comments on that rule.

Comment: DRTx and TCDD suggested amending §568.61(a) to require a hospital to provide mental health treatment in accordance with the highest standards accepted in medical practice.

Response: HHSC agrees and revised §568.61(a) in response to these comments. HHSC notes the new language is consistent with the language in Health and Safety Code §576.022.

Comment: DRTx and TCDD suggested amending §568.61(b) to include the patient's LAR in treatment planning.

Response: HHSC agrees a patient's LAR needs to be included in treatment planning when applicable and revised §568.61(b) in response to these comments.

Comment: DRTx and TCDD suggested adding neurodevelopmental disorders to the lists of diagnoses that will also be treated during the patient's stay at a hospital under §568.61(b)(2)(A). DRTx recommended the term "neuro-developmental disorders" and TCDD recommended the term "any neurodevelopmental disorder" be used.

Response: HHSC agrees neurodevelopmental disorders must be addressed by a treatment plan and revised the rule in response to these comments by adding "neurodevelopmental disorders" to new §568.61(b)(2)(A)(iii). HHSC also recognizes the need to ensure a treatment plan addresses all non-psychiatric conditions with which an individual may be diagnosed, and therefore also added clarification to §568.61(b)(2)(A)(iv) in response to these comments.

Comment: DRTx and TCDD suggested revising the language in §568.61(d) to specify a timeframe for treatment plan reviews, specifically that the treatment plan be reviewed "at least monthly."

Response: HHSC declines to revise the rule in response to these comments in order to maintain consistency between HHSC's rule sets for inpatient mental health facilities. The state hospital rules do not include a timeframe for treatment plan reviews. HHSC notes that §568.61(d)(3) requires a treatment plan review be conducted upon request by a patient or a patient's LAR.

Comment: DRTx and TCDD suggested adding new language to §568.61(d) requiring documentation of the patient and LAR's response to the treatment plan.

Response: HHSC declines to revise the rule in response to these comments. This documentation is already required under §568.61(f).

Comment: DRTx and TCDD suggested revising the language in §568.67(a)(1) to require modification of the hospital environment

"to accommodate the patient's needs" instead of "based on a patient's needs."

Response: HHSC declines to revise the rule in response to these comments. This requirement relates to addressing safety concerns in the hospital environment and the suggested language may make it more difficult for HHSC to enforce compliance with this requirement. HHSC also notes the proposed rule is substantially similar to the CSU standards in 26 TAC Chapter 306.

Comment: DRTx and TCDD suggested adding language to §568.67(b) requiring documentation if a hospital enhances a patient's level of monitoring.

Response: HHSC revised the rule in response to these comments by adding §568.67(b)(3) with language similar to that requested by the commenters and revised §568.67(b)(1)-(2) accordingly.

Comment: DRTx and TCDD suggested amending §568.67(c) to add language requiring further separation of pre-teenagers from teenagers.

Response: HHSC agrees there is a need for hospitals to further separate children from adolescents and revises the rule in response to these comments. HHSC revised §568.67(c) to require providers delivering mental health community services in group settings to separate adults from children and adolescents, and require adolescents be further separated from children according to age and developmental needs, unless there is a clinical or development justification. HHSC also notes this language is used in the CSU standards in 26 TAC Chapter 306.

Comment: DRTx and TCDD suggested adding language to §568.81(a)(1)-(2) to include a patient's LAR and adding language in accordance with S.B. 362, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code §574.091 to require the local mental health authority (LMHA) or local behavioral health authority (LBHA) to be notified of a patient's release and participate in the patient's discharge planning if the patient is in a psychiatric inpatient bed funded under a contract with HHSC or operated by or funded under a contract with a LMHA/LBHA.

Response: HHSC revised §568.81(a)(1)-(2) in response to these comments and in accordance with S.B. 362.

Comment: DRTx and TCDD suggested adding language to §568.81(a)(4) to clarify what entity is responsible for meeting specific patient needs in the discharge plan.

Response: HHSC revised §568.81(a)(4) in response to these comments. HHSC notes the new language is consistent with the language in 26 TAC §306.21.

Comment: DRTx and CHHR suggested clarifying the discharge process when requested by a minor's parent in §568.83(a) by adding the following language: "If a hospital is informed by a parent who has consented to voluntary admission of their ward, that they desire or request their ward leave the hospital, the hospital shall immediately discharge the ward into the parent's custody."

The commenters also suggested amending the language in this section by adding a new subparagraph related to the discharge of an adult or minor in the conservatorship of the state as follows: "If a hospital is informed that an adult or minor in the conservatorship of the State who is voluntarily admitted desires or requests to leave the hospital, the hospital shall, in accordance with Texas Health and Safety Code §572.004."

Response: HHSC declines to revise the rule in response to these comments as releasing a minor patient "immediately into the parent's custody" upon a request of discharge by a parent is prohibited by statute. Health and Safety Code §572.004 requires an examination by a physician to allow for consideration of whether an individual may require court-ordered inpatient care. This requirement under Health and Safety Code §572.004 includes a minor, as a minor may be subject to an emergency detention order or order under Family Code Chapter 55. Regarding commenters' second point, the current language applies to all voluntary patients and therefore this distinction is unnecessary.

Comment: DRTx suggested replacing the proposed language in §568.84(f) with the language in §568.81(a)(2) to clarify the interdisciplinary team must include the patient's LAR and "LMHA/LBHA if the patient is in a psychiatric inpatient bed funded under a contract with HHSC or operated by or funded under a contract with a LMHA/LBHA."

Response: HHSC revised §568.84(f) in response to this comment.

Comment: CCHR expressed concern that the language in §568.101(a) is not sufficient to ensure regulators and former patients are able to request the information necessary to understand what occurred in the hospital and that the proposed language may omit certain elements of a medical record including estimate of charges in accordance with Health and Safety Code §164.009; medication consent in accordance with Health and Safety Code §576.025; medication administration records; and evidence that the patient or LAR received a copy of the patients' rights booklet, and that it was explained orally or by other means calculated to communicate these rights to a patient in accordance with Health and Safety Code §321.002.(g)(2). The commenter also requested this section reflect the CMS special medical record requirements for psychiatric hospitals at 42 CFR §482.61.

Response: HHSC revised the rule in response to this comment by adding paragraphs (15)-(18) to §568.101(a).

Comment: DRTx and TCDD suggested adding language to §568.121(a)(1) to require staff training under this section be competency-based.

Response: HHSC revised §568.121(a) in response to these comments. HHSC notes that this section now aligns with the CSU standards in 26 TAC Chapter 306.

Comment: HSI requested adding HSI as a first aid and cardiopulmonary resuscitation training provider in §568.121.

Response: HHSC revised §568.121(b) and §568.121(e)(2) in response to this comment and to be consistent with other HHSC rule sets.

Minor editorial changes were made to §§568.3, 568.4, 568.22, 568.26, 568.83, and 568.121 to update rule references resulting from revisions to the proposed rule based on comments received.

HHSC made editorial changes in §§568.81(a)(3), 568.81(c), and 568.83(a)-(b) by adding the term "when applicable" for clarity and combined paragraph (1) to subsection (h) of §568.83 to comply with rule formatting. The word "subsection" is deleted in §568.84(a)(1)(A) because it is not necessary.

SUBCHAPTER A. GENERAL REQUIREMENTS

26 TAC §§568.1 - 568.5

STATUTORY AUTHORITY

The new sections 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, and Texas Health and Safety Code Chapter 572 and Chapter 161.

§568.3. Definitions.

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

(1) Administrator--The individual, appointed by a governing body, who has authority to represent the hospital and, as delegated by the governing body, has responsibility for operating the hospital in accordance with the hospital's written policies and procedures.

(2) Administrator's designee--An individual designated in a hospital's written policies and procedures to act for a specified purpose on behalf of the administrator.

(3) Admission--The acceptance of an individual to a hospital's custody and care for inpatient mental health treatment based on:

(A) a physician's order issued in accordance with §568.22(f)(2)(B) of this chapter (relating to Voluntary Admission);

(B) a physician's order issued in accordance with §568.23(c)(3) of this chapter (relating to Emergency Detention);

(C) an order of protective custody issued in accordance with Texas Health and Safety Code §574.022;

(D) an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code §574.034;

(E) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code §574.035;

(F) an order for commitment issued in accordance with Texas Code of Criminal Procedure Chapters 46B or 46C; or

(G) an order for placement in accordance with Texas Family Code Chapter 55.

(4) Adult--An individual 18 years of age.

(5) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code §662.021.

(6) CFR--The Code of Federal Regulations.

(7) Day--Calendar day.

(8) Discharge--The release by a hospital of a patient from the custody and care of the hospital.

(9) DSM--The current edition of the *Diagnostic Statistical Manual of Mental Disorders* published by the American Psychiatric Association.

(10) Emergency medical condition--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance use disorder) such that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) or others in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) in the case of a pregnant woman who is having contractions:

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(11) Governing body--The governing authority of a hospital that is responsible for the hospital's organization, management, control and operation, including appointment of the administrator.

(12) HHSC--The Texas Health and Human Services Commission.

(13) Hospital--

(A) A private psychiatric hospital licensed under Texas Health and Safety Code Chapter 577 (relating to Private Mental Hospitals and Other Mental Health Facilities) and Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units); or

(B) an identifiable inpatient mental health services unit in a hospital licensed under Texas Health and Safety Code Chapter 241 (relating to Hospitals) and 25 TAC Chapter 133 (relating to Hospital Licensing).

(14) Interdisciplinary treatment team (IDT)--A group of individuals who possess the knowledge, skills and expertise to develop and implement a patient's treatment plan and includes:

(A) the patient's treating physician;

(B) the patient and the patient's legally authorized representative (LAR), if any;

(C) the staff members identified in the treatment plan as responsible for providing or ensuring the provision of each treatment in accordance with §568.61(c)(1)(E)(iii) of this chapter (relating to Inpatient Mental Health Treatment and Treatment Planning);

(D) any individual identified by the patient or the patient's LAR, unless clinically contraindicated; and

(E) other staff members as clinically appropriate.

(15) Inpatient mental health treatment--Residential care provided in a hospital for a patient with a mental illness diagnosis, which may include a co-occurring diagnosis of a substance use, neurodevelopmental disorder, or both, which includes:

(A) medical services;

(B) nursing services;

(C) social services;

(D) therapeutic activities, if ordered by the treating physician; and

(E) psychological services, if ordered by the treating physician.

(16) Involuntary patient--A patient who is receiving inpatient mental health treatment based on an admission made in accordance with:

(A) §568.23 of this chapter (relating to Emergency Detention); or

(B) §568.24 of this chapter (relating to Admission of an Individual under an Order of Protective Custody, for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement).

(17) Legally authorized representative (LAR)-- A parent, guardian, or managing conservator of a minor, or the guardian of an adult authorized by law to act on behalf of an individual regarding a matter described in this subchapter regarding:

(A) admission, treatment, transfer, or discharge, including:

(i) a parent, non-Department of Family and Protective Services managing conservator or guardian of minor;

(ii) a Department of Family and Protective Service managing conservator of a minor acting pursuant to Texas Health and Safety Code §572.001(c-2)-(c-4); and

(iii) a person eligible to consent to treatment for a minor under Texas Family Code §32.001(a)(1), (2), or (3), who may request from a district court authorization under Texas Family Code Chapter 35A for the temporary admission of a minor who has been within their care for the past 6 months.

(B) consent on behalf of an individual with regard to a matter described in this subchapter other than admission, treatment, transfer, or discharge, including:

(i) persons described by subparagraph (A) of this paragraph; and

(ii) an agent acting under a Medical Power of Attorney under Texas Health and Safety Code Chapter 250 or a Declaration for Mental Health Treatment under Texas Civil Practice and Remedies Code Chapter 137.

(18) Legal holiday--A holiday listed in Texas Government Code §662.021 and an officially designated county holiday applicable to a court in which proceedings are held under the Texas Mental Health Code.

(19) Licensed marriage and family therapist--An individual who is licensed as a marriage and family therapist by the Texas Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 502.

(20) Licensed master social worker--An individual who is licensed as a master social worker by the Texas Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 505.

(21) Licensed professional counselor--An individual who is licensed as a professional counselor by the Texas Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 503.

(22) Licensed psychologist--An individual who is licensed as a psychologist by the Texas Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 501.

(23) Licensed social worker--An individual who is licensed as a social worker by the Texas Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 505.

(24) Licensed vocational nurse (LVN)--An individual who is licensed as a vocational nurse by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.

(25) Mandatory overtime--The time, other than on-call time, a nursing staff member is required to work at a hospital beyond the hours or days that were scheduled for the staff member. Neither the length of the shift (whether 4, 8, 12, or 16 hours) nor the number of shifts scheduled to work per week (whether 4, 5, or 6 per week) is the determinative factor in deciding whether time is mandatory overtime.

(26) Medical services--Services provided or delegated by a physician acting within the scope of the physician's practice, as described in Texas Occupations Code Title 3, Subtitle B (the Medical Practice Act).

(27) Mental illness--An illness, disease, or condition (other than epilepsy, dementia, substance-related and addictive disorders, or intellectual disability) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(28) Minor--An individual under 18 years of age.

(29) Monitoring--One or more staff members observing a patient on a continual basis or at pre-determined intervals and intervening when necessary to protect the patient from harming self or others.

(30) Neurological screening--A screening to assess an individual's neurological functioning.

(31) Nosocomial infection--A hospital-acquired infection of a patient.

(32) Nursing services--Services provided by, assigned to an LVN by, or delegated to unlicensed assistive personnel (UAP) by an RN acting within the scope of the RN's practice, as described in Texas Occupations Code Chapter 301.

(33) Nursing staff--Staff members of a hospital who are registered nurses, licensed vocational nurses, or UAP.

(34) Occupational therapist--An individual who is licensed as an occupational therapist by the Texas Board of Occupational Therapy Examiners in accordance with Texas Occupations Code Chapter 454.

(35) Pre-admission screening professional (PASP)--A staff member whose responsibilities include conducting a pre-admission screening and who is:

(A) a physician;

(B) a physician assistant;

(C) a registered nurse;

(D) a licensed psychologist;

(E) a psychological associate;

(F) a licensed social worker;

(G) a licensed professional counselor; or

(H) a licensed marriage and family therapist.

(36) Patient--An individual who has been admitted to a hospital and has not been discharged.

(37) Physician--An individual who is licensed as a physician by the Texas Medical Board in accordance with Texas Occupations Code Chapter 155 or otherwise authorized to perform medical acts under that chapter.

(38) Physician assistant--An individual who is licensed as a physician assistant by the Texas Physician Assistant Board in accordance with Texas Occupations Code Chapter 204.

(39) Pre-admission screening--The clinical process used to gather information from a prospective patient, including a medical history, any history of substance use, and the problem for which the prospective patient is seeking treatment, to determine if a physician should conduct an admission examination.

(40) Prospective patient--An individual:

(A) for whom a request for voluntary admission has been made, in accordance with §568.22(a) of this chapter (relating to Voluntary Admission); or

(B) who has been accepted by a hospital for a preliminary examination, in accordance with §568.23(a) of this chapter (relating to Emergency Detention).

(41) Psychological associate--An individual who is licensed as a psychological associate by the Texas Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 501.

(42) Psychological services--Services provided by a psychologist or psychological associate acting within the scope of the psychologist's practice, as described in Texas Occupations Code Chapter 501.

(43) Psychologist--An individual who is licensed as a psychologist by the Texas State Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 501.

(44) Registered nurse (RN)--An individual who is licensed as an RN by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.

(45) Sentinel event--Any of the following occurrences:

(A) the death of a patient;

(B) the serious physical injury of a patient;

(C) the serious psychological injury of a patient; or

(D) circumstances that present the imminent risk of death, serious physical injury, or serious psychological injury of a patient.

(46) Social services--Services provided by:

(A) a licensed master social worker or licensed social worker acting within the scope of the social worker's practice, as described in Texas Occupations Code Chapter 505; or

(B) a licensed professional counselor acting within the scope of the professional counselor's practice, as described in Texas Occupations Code Chapter 503.

(47) Stabilize--To provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a hospital or, if the emergency medical condition for a woman is that she is in labor, that the woman has delivered the child and the placenta.

(48) Staff members--All personnel of a hospital including full-time and part-time employees, contractors, students, volunteers, and professionals granted privileges by the hospital.

(49) Substance-related disorder--The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which currently meets

the criteria for substance-related and addictive disorders as described in the DSM. May also be known as a substance use disorder, substance abuse disorder, or addictive disorder.

(50) TAC--The Texas Administrative Code.

(51) Therapeutic activity--One of the following structured activities designed to develop, restore or maintain a patient's optimal level of physical and psychosocial functioning:

(A) recreational therapy provided by a therapeutic recreation specialist;

(B) physical therapy, speech therapy, or occupational therapy, provided by a licensed staff member acting within the scope of the staff member's practice;

(C) art therapy provided by a staff member who is a Board-Certified Art Therapist;

(D) music therapy provided by a staff member who is a Board-Certified Music Therapist; or

(E) psychosocial or leisure activities provided by qualified staff members.

(52) Therapeutic recreation specialist--An individual who is certified as a therapeutic recreation specialist by the Texas Consortium for Therapeutic Recreation/Activities Certification or a certified therapeutic recreation specialist by the National Council for Therapeutic Recreation Certification.

(53) Treating physician--A physician who coordinates and oversees the implementation of a patient's treatment plan.

(54) Unit--A discrete and identifiable area of a hospital that includes patients' rooms or other patient living areas and is separated from another similar area:

(A) by a locked door;

(B) by a floor; or

(C) because the other similar area is in a different building.

(55) Unlicensed assistive personnel (UAP)--An individual, not licensed as a health care provider, who provides certain health related tasks or functions in a complementary or assistive role to a registered nurse in providing direct patient care or carrying out common nursing functions.

(56) Voluntary patient--A patient who is receiving inpatient mental health treatment based on an admission made in accordance with:

(A) §568.22 of this chapter (relating to Voluntary Admission); or

(B) §568.26 of this chapter (relating to Voluntary Treatment Following Involuntary Admission).

§568.4. General Provisions.

(a) Written policies and procedures. A hospital shall develop written policies and procedures that ensure compliance with this subchapter.

(b) Compliance by staff. All staff members shall comply with this subchapter and the policies and procedures of the hospital required by subsection (a) of this section.

(c) Responsibility of hospital. A hospital shall be responsible for a staff member's compliance with this subchapter and the policies and procedures required by subsection (a) of this section.

(d) Enforcement of policies and procedures. A hospital shall take appropriate measures to ensure a staff member's compliance with this subchapter and the policies and procedures required by subsection (a) of this section.

(e) Implementation of physician orders. A hospital shall implement all orders issued by a physician for a patient or provide adequate written justification for failing to implement the orders.

(f) Physician delegation. Except as provided by §568.22(h)(3) of this chapter (relating to Voluntary Admission), or other state law as applicable, a physician may delegate any medical service described in this subchapter in accordance with Texas Occupations Code §157.001.

(g) Compliance with rules. A hospital shall comply with the following HHSC rules:

(1) 25 TAC Chapter 405, Subchapter E (relating to Electroconvulsive Therapy (ECT));

(2) 25 TAC Chapter 415, Subchapter A (relating to Prescribing of Psychoactive Medication);

(3) 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services) however, this does not prohibit the use of law enforcement in a situation that sufficiently warrants the need for law enforcement assistance, including to regain safety in the hospital;

(4) 25 TAC Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication-Mental Health Services); and

(5) 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services).

(h) Compliance with Treatment Facilities Marketing Practices Act. Unless it is exempt, a hospital shall comply with Texas Health and Safety Code Chapter 164 (relating to Treatment Facilities Marketing and Admission Practices).

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SUBCHAPTER B. ADMISSION

26 TAC §§568.21 - 568.26

STATUTORY AUTHORITY

The new sections 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, and Texas Health and Safety Code Chapter 572 and Chapter 161.

§568.22. *Voluntary Admission.*

(a) A request for voluntary admission:

(1) may be made only by a person authorized to do so under Texas Health and Safety Code §572.001;

(2) must be in writing and signed by the individual making the request; and

(3) must include a statement that the individual making the request:

(A) certifies that the individual is legally authorized to act on the prospective patient's behalf;

(B) has provided the facility with documentation demonstrating that the individual is legally authorized to act on the prospective patient's behalf;

(C) agrees that the prospective patient will remain in the hospital until discharged; and

(D) consents to diagnosis, observation, care and treatment of the prospective patient until the earlier of:

(i) the discharge of the prospective patient; or

(ii) the prospective patient is entitled to leave the hospital, in accordance with Texas Health and Safety Code §572.004, after a request for discharge is made.

(b) The consent given under subsection (a)(3)(D) of this section does not waive any rights a patient has under any statute or rule.

(c) Capacity to consent. If a prospective patient does not have the capacity to consent to diagnosis, observation, care and treatment, as determined by a physician, then the hospital may not admit the prospective patient on a voluntary basis. When appropriate, the hospital may initiate an emergency detention proceeding in accordance with Texas Health and Safety Code Chapter 573 or file an application for court-ordered inpatient mental health services in accordance with Texas Health and Safety Code Chapter 574.

(d) An individual who voluntarily presents to the hospital may leave the hospital at any time during the pre-admission screening and assessment process prior to their admission.

(e) Pre-admission screening.

(1) Before voluntary admission of a prospective patient, pre-admission screening personnel (PASP) shall conduct a pre-admission screening of the prospective patient.

(2) If the PASP determines that the prospective patient does not need an admission examination, the hospital may not admit the prospective patient and shall refer the prospective patient to alternative services. If the PASP determines the prospective patient needs an admission examination, a physician shall conduct an admission examination of the prospective patient.

(3) If the pre-admission screening is conducted by a physician, the physician may conduct the pre-admission screening as part of the admission examination referenced in subsection (f)(2)(A) of this section.

(f) Requirements for voluntary admission. A hospital may voluntarily admit a prospective patient only if:

(1) a request for admission is made in accordance with subsection (a) of this section;

(2) a physician has, in accordance with Texas Health and Safety Code §572.0025:

(A) conducted, or consulted with a physician who has conducted, either in person or through telemedicine medical services,

an admission examination in accordance with subsection (h) of this section within 72 hours before or 24 hours after admission; and

(B) issued an order admitting the prospective patient;

(3) the prospective patient meets the hospital's admission criteria;

(4) the prospective patient is a person:

(A) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(B) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized; and

(5) in accordance with Texas Health and Safety Code §572.0025(f)(2), the administrator or administrator's designee has signed a written statement agreeing to admit the prospective patient.

(g) Intake. In accordance with Texas Health and Safety Code §572.0025(b), a hospital shall, before voluntary admission of a prospective patient, conduct an intake process, that includes:

(1) obtaining relevant information about the prospective patient, including information about finances, insurance benefits and advance directives; and

(2) explaining, orally and in writing, the prospective patient's rights described in 25 TAC Chapter 404, Subchapter E (concerning Rights of Persons Receiving Mental Health Services), including:

(A) the hospital's services and treatment as they relate to the prospective patient; and

(B) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system of the state of Texas, pursuant to Texas Health and Safety Code §576.008.

(h) Admission examination.

(1) The admission examination referenced in subsection (d)(2)(A) of this section shall be conducted by a physician in accordance with Texas Health and Safety Code Chapter 572 and include a physical and psychiatric examination conducted in the physical presence of the patient or by using audiovisual telecommunications.

(2) The physical examination may consist of an assessment for medical stability.

(3) The physician may not delegate conducting the admission examination to a non-physician.

(i) Documentation of admission order. In accordance with Texas Health and Safety Code §572.0025(f)(1), the order described in subsection (f)(2)(B) of this section shall:

(1) be issued in writing and signed by the issuing physician; or

(2) be issued orally or electronically if, within 24 hours after its issuance, the hospital has a written order signed by the issuing physician.

§568.23. *Emergency Detention.*

(a) Acceptance for preliminary examination. In accordance with Texas Health and Safety Code §573.021 and §573.022, a hospital shall accept for a preliminary examination:

(1) an individual who has been transported to a hospital by peace officer or emergency medical services personnel in accordance with Texas Health and Safety Code §573.001 or §573.012; or

(2) an individual who is at least 18 years of age or older and who has been transported to the hospital by the individual's guardian of the person in accordance with Texas Health and Safety Code §573.003.

(b) Preliminary examination.

(1) A physician shall examine the person as soon as possible within 12 hours after the time the person is apprehended by the peace officer or transported for emergency detention by the person's guardian, in accordance with Texas Health and Safety Code §573.021.

(2) The preliminary examination shall include:

(A) an assessment for medical stability; and

(B) a psychiatric examination to determine if the individual meets the criteria described in subsection (c)(1) of this section.

(c) Requirements for emergency detention. A hospital may admit a prospective patient for emergency detention only if:

(1) in accordance with Texas Health and Safety Code §573.022(a)(2), a physician determines from the preliminary examination that:

(A) the prospective patient has a mental illness;

(B) the prospective patient evidences a substantial risk of serious harm to self or others;

(C) the described risk of harm is imminent unless the prospective patient is immediately detained; and

(D) emergency detention is the least restrictive means by which the necessary detention may be accomplished;

(2) in accordance with Texas Health and Safety Code §573.022(a)(3), a physician makes a written statement:

(A) documenting the determination described in paragraph (1) of this subsection; and

(B) describing:

(i) the nature of the prospective patient's mental illness;

(ii) the risk of harm the individual evidences, demonstrated either by the prospective patient's behavior or by evidence of severe emotional distress and deterioration in the prospective patient's mental condition to the extent that the prospective patient may harm themselves or another; and

(iii) the detailed information on which the physician based the determination described in paragraph (1) of this subsection;

(3) based on the determination described in paragraph (1) of this subsection, the physician issues an order admitting the prospective patient for emergency detention; and

(4) the prospective patient meets the hospital's admission criteria, as required by §568.21 of this subchapter (relating to Admission Criteria).

(d) Release.

(1) A hospital shall release a prospective patient accepted for a preliminary examination if:

(A) a preliminary examination of the prospective patient has not been conducted within the time frame described in subsection (b)(1) of this section; or

(B) in accordance with Texas Health and Safety Code §573.023(a), the prospective patient is not admitted for emergency detention in accordance with subsection (c) of this section on completion of the preliminary examination.

(2) In accordance with Texas Health and Safety Code §576.007, before releasing a prospective patient who is at least 18 years of age or older, a hospital shall make a reasonable effort to notify the prospective patient's family of the release if the prospective patient grants permission for the notification.

(3) Before releasing a patient who is younger than 18 years of age, a hospital shall notify the patient's legally authorized representative (LAR) or the LAR's designee of the release.

(4) Upon release, the hospital may release a minor younger than 18 years of age only to the minor's LAR or the LAR's designee.

(5) In accordance with Texas Health and Safety Code §573.021(b), a person accepted for a preliminary examination may be detained in custody for not longer than 48 hours after the person was presented to the facility, unless a written order for protective custody is obtained. If the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4:00 PM on the first succeeding business day, the person may be detained until 4:00 PM on the first succeeding business day. If the 48-hour period ends at a different time, the person may be detained only until 4:00 PM on the day the 48-hour period ends.

(e) Intake. A hospital shall conduct an intake process as soon as possible, but not later than 24 hours after the time a patient is admitted for emergency detention.

(1) The intake process shall include:

(A) obtaining, as much as possible, relevant information about the patient, including information about finances, insurance benefits and advance directives; and

(B) explaining to the patient and their LAR, when applicable, orally and in writing, the patient's rights described in 25 TAC Chapter 404, Subchapter E (concerning Rights of Persons Receiving Mental Health Services), including:

(i) the hospital's services and treatment as they relate to the patient; and

(ii) the existence, purpose, telephone number, and address of the protection and advocacy system of the state of Texas, as required by Texas Health and Safety Code §576.008.

(2) The hospital shall determine whether the patient comprehends the information provided in accordance with paragraph (1)(B) of this subsection. If the hospital determines that the patient comprehends the information, the hospital shall document in the patient's medical record the reasons for such determination. If the hospital determines that the patient does not comprehend the information, the hospital shall:

(A) repeat the explanation to the patient at reasonable intervals until the patient demonstrates comprehension of the information or is discharged, whichever occurs first; and

(B) document in the patient's medical record the patient's response to each explanation and whether the patient demonstrated comprehension of the information.

§568.24. *Admission of an Individual under an Order of Protective Custody, for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement.*

(a) Requirements for admission under court order. A hospital may admit an individual:

(1) under an order of protective custody only if a court has issued an order in accordance with Texas Health and Safety Code §574.022;

(2) for court-ordered inpatient mental health services only if a court has issued:

(A) an order for temporary inpatient mental health services in accordance with Texas Health and Safety Code §574.034; or

(B) an order for extended inpatient mental health services in accordance with Texas Health and Safety Code §574.035;

(3) under an order for commitment issued in accordance with the Texas Code of Criminal Procedure Chapters 46B or 46C; or

(4) under an order for placement issued in accordance with Texas Family Code Chapter 55.

(b) Intake. A hospital shall conduct an intake process as soon as possible, but not later than 24 hours after the time a patient is admitted under one of the orders described in subsection (a) of this section.

(1) The intake process shall include:

(A) obtaining, as much as possible, relevant information about the patient, including information about finances, insurance benefits and advance directives; and

(B) explaining to the patient and their LAR, when applicable, orally and in writing, the patient's rights described in 25 TAC Chapter 404, Subchapter E (concerning Rights of Persons Receiving Mental Health Services), including:

(i) the hospital's services and treatment as they relate to the patient; and

(ii) the existence, purpose, telephone number, and address of the protection and advocacy system of the state of Texas, as required by Texas Health and Safety Code §576.008.

(2) The hospital shall determine whether the patient comprehends the information provided in accordance with paragraph (1)(B) of this subsection. If the hospital determines that the patient comprehends the information, the hospital shall document in the patient's medical record the reasons for such determination. If the hospital determines that the patient does not comprehend the information, the hospital shall:

(A) repeat the explanation to the patient at reasonable intervals until the patient demonstrates comprehension of the information or is discharged, whichever occurs first; and

(B) document in the patient's medical record the patient's response to each explanation and whether the patient demonstrated comprehension of the information.

§568.26. *Voluntary Treatment Following Involuntary Admission.*

A hospital may provide inpatient mental health treatment to an involuntary patient after the patient is eligible for discharge, as described in §568.84 of this chapter (relating to Discharge of an Involuntary Patient), if before the provision of such treatment:

(1) the hospital obtains written consent for voluntary inpatient mental health treatment that meets the requirements of a request for voluntary admission, as described in §568.22(a) of this subchapter (relating to Voluntary Admission); and

(2) the patient's treating physician:

(A) examines the patient; and

(B) based on that examination, issues an order for voluntary inpatient mental health treatment that meets the requirements of §568.22(i) of 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.

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SUBCHAPTER C. EMERGENCY TREATMENTS

26 TAC §568.41

STATUTORY AUTHORITY

The new section 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, and Texas Health and Safety Code Chapter 572 and Chapter 161.

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SUBCHAPTER D. SERVICE REQUIREMENTS

26 TAC §§568.61 - 568.67

STATUTORY AUTHORITY

The new sections 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, and Texas Health and Safety Code Chapter 572 and Chapter 161.

§568.61. *Inpatient Mental Health Treatment and Treatment Planning.*

(a) Inpatient mental health treatment. A hospital shall provide inpatient mental health treatment and medical care to a patient under the direction of a physician, in accordance with the highest standards accepted in medical practice, and in accordance with the patient's treatment plan and this subchapter. The treatment plan shall be appropriate to the needs and interests of the patient and be directed toward restoring

and maintaining optimal levels of physical and psychological functioning.

(b) Treatment plan content within 24 hours. A hospital, in collaboration with the patient and LAR, when applicable, shall develop and implement a written treatment plan within 24 hours after the patient's admission. If the patient is unable or unwilling to collaborate with the hospital, the circumstances of such inability or unwillingness shall be documented in the patient's medical record.

(1) The treatment plan shall be based on the findings of:

(A) the physical examination described in §568.62(e)(1)(A) or (B) of this subchapter (relating to Medical Services);

(B) the psychiatric evaluation described in §568.62(f) of this subchapter; and

(C) the initial nursing assessment described in §568.63(e) of this subchapter (relating to Nursing Services).

(2) The treatment plan shall contain:

(A) a list of all diagnoses for the patient with notation as to which diagnoses will be treated at the hospital, including:

(i) at least one mental illness diagnosis;

(ii) any substance-related or addictive disorder diagnoses;

(iii) neurodevelopmental disorders; and

(iv) any other non-psychiatric conditions;

(B) a list of problems and needs that are to be addressed during the patient's hospitalization;

(C) a description of all treatment interventions intended to address the patient's problems and needs, including the medications prescribed and the symptoms each medication is intended to address;

(D) identification of any additional assessments and evaluations to be conducted, which shall include the social assessment described in §568.64(d) of this subchapter (relating to Social Services);

(E) identification of the level of monitoring assigned to the patient; and

(F) the rationale for the treatment interventions and any enhanced levels of monitoring described in subparagraphs (C) and (E) of this paragraph.

(c) Treatment plan content within 72 hours.

(1) Within 72 hours of the patient's admission the hospital shall:

(A) establish an interdisciplinary treatment team (IDT) for a patient;

(B) conduct the social assessment described in subsection (b)(2)(D) of this section;

(C) initiate referrals for any additional assessments and evaluations identified in accordance with subsection (b)(2)(D) of this section;

(D) review the content of the treatment plan required by subsection (b)(2) of this section, and revise the plan, if necessary, based on the findings of the social assessment or as otherwise clinically indicated; and

(E) add to the treatment plan:

(i) a description of the goals of the patient relating to the problems and needs listed in accordance with subsection (b)(2)(B) of this section;

(ii) the specific treatment modalities for each treatment intervention by type and frequency;

(iii) the IDT member responsible for providing or ensuring the provision of each treatment intervention;

(iv) the time frames and measures to evaluate progress of the treatment plan toward meeting the goals of the patient;

(v) a description of the clinical criteria for the patient to be discharged; and

(vi) a description of the recommended services and supports needed by the patient after discharge as required by §568.81(a)(3)(A) of this chapter (relating to Discharge Planning).

(2) The treatment plan shall be signed by all members of the IDT. If the patient is unable or unwilling to sign the treatment plan, the reason for or circumstances of such inability or unwillingness shall be documented in the patient's medical record.

(d) Treatment plan review. In addition to the review required by subsection (c)(1)(D) of this section, the treatment plan shall be reviewed, and its effectiveness evaluated:

(1) when there is a significant change in the patient's condition or diagnosis or as otherwise clinically indicated;

(2) in accordance with the time frames and measures described in the treatment plan; and

(3) upon request by the patient or the patient's legally authorized representative.

(e) Treatment plan revision. In addition to a revision required by subsection (c)(1)(D) of this section, the treatment plan shall be revised, if necessary, based on the findings of any assessment, reassessment, evaluation, or re-evaluation, or as otherwise clinically indicated.

(f) Documentation of treatment plan review and revisions. A treatment plan review and revision shall be signed by all members of the IDT. If the patient is unable or unwilling to sign the review or revision, the reason for or circumstances of such inability or unwillingness shall be documented in the patient's medical record.

§568.67. Protection of a Patient.

(a) Modifying the environment and monitoring the patient. A hospital shall protect a patient by taking the following measures:

(1) modifying the hospital environment based on the patient's needs, including:

(A) providing furnishings that do not present safety hazards to the patient;

(B) securing or removing objects that are hazardous to the patient; and

(C) installing any necessary safety devices;

(2) monitoring the patient at the level of monitoring most recently specified in the patient's medical record; and

(3) making roommate assignments and other decisions affecting the interaction of the patient with other patients, based on patient needs and vulnerabilities.

(b) Levels of monitoring. A hospital shall:

(1) define each level of monitoring in the hospital's policies and procedures, including a description of the responsibilities of staff members for each level of monitoring;

(2) implement the level of monitoring ordered by the physician, or physician-delegated physician's assistant or advanced practice registered nurse, based on the individual's needs; and

(3) document the clinical justification for any level of monitoring.

(c) Separation of patients by age. A provider that delivers mental health community services to children and adolescents in group settings (e.g., residential, day programs, group therapy, partial hospitalization, and inpatient) shall separate children and adolescents from adults. The provider shall further separate children from adolescents according to age and developmental needs, unless there is a clinical or developmental justification in the medical record.

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SUBCHAPTER E. DISCHARGE

26 TAC §§568.81 - 568.84

STATUTORY AUTHORITY

The new sections 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, and Texas Health and Safety Code Chapter 572 and Chapter 161.

§568.81. Discharge Planning.

(a) Involvement of staff, patient, and legally authorized representative (LAR), when applicable, in planning activities.

(1) Following the admission of a patient to a hospital, the hospital shall conduct discharge planning with the patient and LAR, as well as the LMHA or LBHA if the patient is in a psychiatric inpatient bed funded under a contract with HHSC or operated by or funded under a contract with a LMHA or LBHA.

(2) Discharge planning shall involve the interdisciplinary treatment team (IDT), which includes the patient and LAR, as well as the LMHA or LBHA if the patient is in a psychiatric inpatient bed funded under a contract with HHSC or operated by or funded under a contract with a LMHA or LBHA.

(3) Discharge planning shall include, at a minimum, the following activities:

(A) the patient's IDT recommending services and supports needed by the patient after discharge, including the placement after discharge;

(B) qualified staff members arranging for the services and supports recommended by the patient's IDT;

(C) qualified staff members counseling the patient, the patient's LAR, when applicable, and as appropriate, the patient's caregivers, to prepare them for post-discharge care; and

(D) Preadmission Screening and Resident Review (PASRR) as required by paragraph (5) of this subsection.

(4) The discharge plan shall consist of:

(A) a description of the individual's living arrangement after discharge that reflects the individual's preferences, choices, and available community resources;

(B) arrangements and referrals for the available and accessible services and supports agreed upon by the individual or LAR recommended in the individual's discharge plan;

(C) a written description of recommended clinical and non-clinical services and supports the individual may receive after discharge. The hospital documents arrangements and referrals for the services and supports recommended upon discharge in the discharge plan;

(D) a description of problems identified at discharge, including any issues that may disrupt the individual's stability in the community;

(E) the individual's goals, strengths, interventions, and objectives as stated in the individual's discharge plan in the hospital;

(F) comments or additional information;

(G) a final diagnosis based on the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association;

(H) the names, contact information, and addresses of providers to whom the individual will be referred for any services or supports after discharge; and

(I) in accordance with Texas Health and Safety Code §574.081, a description of:

(i) the types and amount of medication the individual needs after discharge until the individual is evaluated by a physician; and

(ii) the person or entity responsible for providing and paying for the medication.

(5) Screening and evaluation before patient discharge from hospital. In accordance with 42 CFR Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules set forth in Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the hospital to a nursing facility shall be screened, and if appropriate, evaluated, before discharge by the hospital and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability, or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability, or developmental disability, the hospital shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code §533.035, to conduct before hospital discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(A) to ensure that placement of the patient in a nursing facility, is necessary;

(B) to identify alternate placement options, when applicable; and

(C) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(b) Discharge summary. The patient's treating physician shall prepare a written discharge summary that includes:

(1) a description of the patient's treatment at the hospital and the response to that treatment;

(2) a description of the patient's condition at discharge;

(3) a description of the patient's placement after discharge;

(4) a description of the services and supports the patient will receive after discharge;

(5) a final diagnosis based on the DSM;

(6) a description of the amount of medication the patient will need until the patient is evaluated by a physician; and

(7) in accordance with Texas Health and Safety Code §574.081(c) and (h), for involuntary patients admitted under an order described in §568.24(a)(2) of this chapter (related to Admission of an Individual under an Order of Protective Custody, for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement), the name of the individual or entity responsible for providing and paying for the medication referenced in paragraph (6) of this subsection, which is not required to be the hospital.

(c) Documentation of refusal. If it is not feasible for any of the activities listed in subsection (a)(3) of this section to be performed because the patient, the patient's LAR, when applicable, or the patient's caregivers refuse to participate in the discharge planning, the circumstances of the refusal shall be documented in the patient's medical record.

§568.83. *Discharge of a Voluntary Patient Requesting Discharge.*

(a) Request for discharge. If a hospital is informed that a voluntary patient desires to leave the hospital or a voluntary patient or the patient's legally authorized representative (LAR), when applicable, requests that the patient be discharged, the hospital shall, in accordance with Texas Health and Safety Code §572.004:

(1) inform the patient or the patient's LAR that the request must be in writing and signed, timed, and dated by the requestor; and

(2) if necessary, and as soon as possible, assist the patient in creating a written request for discharge and present it to the patient for the patient's signature.

(b) Responding to a written request for discharge. If a written request for discharge from a voluntary patient or the patient's LAR, when applicable, is made known to a hospital, the hospital shall:

(1) within four hours after the request is made known to the hospital, notify the treating physician or, if the treating physician is not available during that time, notify another physician who is a hospital staff member of the request;

(2) file the request in the patient's medical record; and

(3) if the request is from a patient admitted under §568.22(a)(3)(D) of this chapter (relating to Voluntary Admission), notify the patient's LAR of the request, except as provided by 42 CFR Part 2.

(c) Discharge or examination. In accordance with Texas Health and Safety Code §572.004(c) and (d), if the physician who is notified in accordance with subsection (b)(1) of this section:

(1) does not have reasonable cause to believe that the patient may meet the criteria for court-ordered inpatient mental health services or emergency detention, a hospital shall discharge the patient within the four-hour time period described in subsection (b)(1) of this section; or

(2) has reasonable cause to believe that the patient may meet the criteria for court-ordered inpatient mental health services or emergency detention, the physician shall examine the patient as soon as possible within 24 hours after the request for discharge is made known to the hospital.

(d) Discharge if not examined within 24 hours or if criteria not met.

(1) If a patient whom a physician believes may meet the criteria for court-ordered inpatient mental health services or emergency services is not examined within 24 hours after the request for discharge is made known to the hospital, the hospital shall discharge the patient.

(2) In accordance with Texas Health and Safety Code §572.004(d), if the physician conducting the examination described in subsection (c)(2) of this section determines that the patient does not meet the criteria for court-ordered inpatient mental health services or emergency detention, the hospital shall discharge the patient upon completion of the examination.

(e) Discharge or filing application if criteria met. In accordance with Texas Health and Safety Code §572.004(d), if the physician conducting the examination described in subsection (c)(2) of this section determines that the patient meets the criteria for court-ordered inpatient mental health services or emergency detention, the hospital shall, by 4:00 p.m. on the next business day:

(1) file an application for court-ordered inpatient mental health services or emergency detention and obtain a court order for further detention of the patient; or

(2) discharge the patient.

(f) Notification by physician. In accordance with Texas Health and Safety Code §572.004(d), if the hospital intends to detain a patient to file an application and obtain a court order for further detention of the patient, a physician shall:

(1) notify the patient of such intention; and

(2) document the reasons for the decision to detain the patient in the patient's medical record.

(g) Withdrawal of request for discharge. In accordance with Texas Health and Safety Code §572.004(f), a hospital is not required to complete the discharge process described in this section if the patient makes a written statement to withdraw the request for discharge.

(h) Discharge of patients receiving court-ordered mental health services. In accordance with Texas Health and Safety Code §574.81 (relating to Continuing Care Plan Before Furlough or Discharge), for any patient residing in an psychiatric inpatient bed funded under a contract with HHSC or operated by or funded under a contract with a local mental health authority (LMHA) or a behavioral mental health authority (LBHA), the physician responsible for the patient's treatment is required to inform the LMHA/LBHA prior to the discharge must include them in planning the discharge of a patient. The plan must address:

(1) the patient's mental health and physical needs;

(2) the need for outpatient mental health services following furlough or discharge, if applicable; and

(3) the need for sufficient psychoactive medications for the patient until the patient sees a physician, not to exceed seven days after discharge.

§568.84. *Discharge of an Involuntary Patient.*

(a) Discharge from emergency detention.

(1) Except as provided by §568.26 of this chapter (relating to Voluntary Treatment Following Involuntary Admission), and in accordance with Texas Health and Safety Code §573.023(b) and §573.021(b), a hospital shall immediately discharge a patient under emergency detention if either of the following occurs:

(A) the administrator or the administrator's designee determines, based on a physician's determination, that the patient no longer meets the criteria described in §568.23(c)(1) of this chapter (relating to Emergency Detention); or

(B) except as provided in paragraphs (2) and (3) of this subsection, 48 hours elapse from the time the patient was presented to the hospital and the hospital has not obtained a court order for further detention of the patient.

(2) In accordance with Texas Health and Safety Code §573.021(b), if the 48-hour period described in paragraph (1)(B) of this subsection ends on a Saturday, Sunday, or legal holiday, or before 4:00 p.m. on the next business day after the patient was presented to the hospital, the patient may be detained until 4:00 p.m. on such business day.

(b) Discharge under Order of Protective Custody. Except as provided by §568.26 of this chapter and in accordance with Texas Health and Safety Code §574.028, a hospital shall immediately discharge a patient under an Order of Protective Custody if any of the following occurs:

(1) the administrator or the administrator's designee determines that, based on a physician's determination, the patient no longer meets the criteria described in Texas Health and Safety Code §574.022(a);

(2) the administrator or the administrator's designee does not receive notice that the patient's continued detention is authorized after a probable cause hearing held within the time prescribed by Texas Health and Safety Code §574.025(b);

(3) a final order for court-ordered inpatient mental health services has not been entered within the time prescribed by Texas Health and Safety Code §574.005; or

(4) an order to release the patient is issued in accordance with Texas Health and Safety Code §574.028(a).

(c) Discharge under court-ordered inpatient mental health services.

(1) Except as provided by §568.26 of this chapter, and in accordance with Texas Health and Safety Code §574.085 and §574.086(a), a hospital shall immediately discharge a patient under a temporary or extended order for inpatient mental health services if either of the following occurs:

(A) the order for inpatient mental health services expires; or

(B) the administrator or the administrator's designee determines that, based on a physician's determination, the patient no longer meets the criteria for court-ordered inpatient mental health services.

(2) In accordance with Texas Health and Safety Code §574.086(b), before discharging a patient in accordance with para-

graph (1) of this subsection, the administrator or administrator's designee shall consider whether the patient should receive court-ordered outpatient mental health services in accordance with a modified order described in Texas Health and Safety Code §574.061.

(d) Discharge under Texas Code of Criminal Procedure order for commitment. A patient admitted under an order for commitment issued in accordance with the Texas Code of Criminal Procedure Chapter 46B or 46C may only be discharged in accordance with the applicable provisions in Chapter 46B or 46C.

(e) Discharge under Texas Family Code order for placement. A patient admitted under an order for placement issued in accordance with Texas Family Code Chapter 55 shall be discharged in accordance with the Texas Family Code Chapter 55.

(f) Discharge planning shall involve the interdisciplinary treatment team, which includes the patient and LAR, as well as the LMHA or LBHA if the patient is in a psychiatric inpatient bed funded under a contract with HHSC or operated by or funded under a contract with a LMHA or LBHA.

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

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SUBCHAPTER F. DOCUMENTATION

26 TAC §568.101

STATUTORY AUTHORITY

The new section 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, and Texas Health and Safety Code Chapter 572 and Chapter 161.

§568.101. *Content of Medical Record.*

(a) Medical record. A hospital shall maintain a medical record for a patient. The medical record shall include, at a minimum:

(1) documentation of whether the patient is a voluntary patient, on emergency detention, or under a court order, including the physician or court order, as appropriate;

(2) any applications for admission, court orders for admission, or notices of detention;

(3) documentation of the reasons the patient, legally authorized representative (LAR), family members, or other caregivers state that the patient was admitted to the hospital;

(4) justification for each mental illness diagnosis and any substance-related or addictive disorder diagnosis;

(5) the level of monitoring assigned and implemented in accordance with §568.25 of this chapter (relating to Monitoring Upon

Admission) and any changes to such level before the implementation of the patient's treatment plan;

(6) the patient's treatment plan;

(7) the name of the patient's treating physician;

(8) the names of the members of the patient's interdisciplinary treatment team (IDT), if required by the patient's length of stay;

(9) written findings of the physical examination described in §568.62(e)(1)(A) or (B) of this chapter (relating to Medical Services);

(10) written findings of:

(A) the psychiatric evaluation described in §568.62(f) of this chapter; and

(B) the assessments described in §568.63(e) of this chapter (relating to Nursing Services), §568.64(d) of this chapter (relating to Social Services), §568.65(b) of this chapter (relating to Therapeutic Activities), and §568.66(b) of this chapter (relating to Psychological Services); and

(C) any other assessment of the patient conducted by a staff member;

(11) the progress notes for the patient as described in subsection (b) of this section;

(12) documentation of the monitoring of the patient by the staff members responsible for such monitoring, including observations of the patient at pre-determined intervals;

(13) documentation of the discharge planning activities required by §568.81(a)(3) of this chapter (relating to Discharge Planning);

(14) the discharge summary as required by §568.81(b) of this chapter;

(15) the estimate of charges required to be made part of the record by Texas Health and Safety Code §164.009;

(16) medication consent required by Texas Health and Safety Code §576.025;

(17) medication administration records; and

(18) evidence that the patient or LAR received and signed a copy of the patients' rights booklet explaining rights listed in the patient bill of rights, plus that it was explained orally or by other means calculated to communicate these rights to a patient. This is specifically required by Texas Health and Safety Code §321.002(g)(2) to be included in the patient's record.

(b) Progress notes. The progress notes referenced in subsection (a)(11) of this section must be documented in accordance with this subsection.

(1) The appropriate members of the patient's IDT shall make written notes of the patient's progress to include, at a minimum:

(A) documentation of the patient's response to treatment provided under the treatment plan;

(B) documentation of the patient's progress toward meeting the goals listed in the patient's treatment plan; and

(C) documentation of the findings of any re-evaluation or reassessment conducted by a staff member.

(2) Requirements regarding the frequency of making progress notes are as follows:

(A) a physician shall document the findings of a re-evaluation described in §568.62(g) of this chapter at the time each re-evaluation is conducted; and

(B) a registered nurse shall document the findings of a reassessment described in §568.63(f) of this chapter at the time each reassessment is conducted.

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

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SUBCHAPTER G. STAFF DEVELOPMENT

26 TAC §568.121

STATUTORY AUTHORITY

The new section 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, and Texas Health and Safety Code Chapter 572 and Chapter 161.

§568.121. *Staff Member Training.*

(a) Staff member training shall be in accordance with §301.331 of this title (relating to Competency and Credentialing).

(1) A hospital administrator, or administrator's designee, shall:

(A) ensure that services are provided by staff members who are operating within their scope of their license, credentialing, job description, or contract specification, and in accordance with applicable state law and rule, including 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services);

(B) define competency-based expectations for each hospital staff position and ensure each staff member receives initial training before the staff member assumes responsibilities required by the hospital and annually throughout the staff member's employment with the hospital;

(C) provide hospital staff live, interactive, instructor-led electronic or face-to-face training competency-based training; and

(D) require all staff members to demonstrate required competencies delineated in §301.331(a)(3)(A) of this title, including:

(i) identifying, preventing, and reporting abuse and neglect of patients and unprofessional or unethical conduct in the hospital, as defined by Texas Health and Safety Code §161.131 (relating to Definitions);

(ii) identifying, preventing, and reporting abuse, neglect, and exploitation as follows, in accordance with Texas Health and Safety Code §161.133 (relating to In-service Training):

(I) residential staff must receive eight hours of training;

(II) training must be conducted in person, and not through teleconferencing, web-based video conferencing, or other technology;

(III) a hospital must ensure all new employees receive training on abuse, neglect, and exploitation; and

(IV) a hospital may provide abuse, neglect, and exploitation training to staff or may choose to contract with an outside entity to provide the training;

(iii) preserving and protecting dignity and rights of a patient in accordance with 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services); and

(iv) preserving and protecting confidentiality of a patient's information in accordance with Texas Health and Safety Code Chapter 611 or Chapter 241, Subchapter G, as applicable, 42 CFR Part 2, and 45 CFR Parts 160 and 164.

(2) All registered nurses (RNs), licensed vocational nurses (LVNs), and unlicensed assistive personnel (UAP) shall receive training in:

(A) monitoring for patient safety in accordance with §568.67 of this chapter (relating to Protection of a Patient);

(B) infection control in accordance with §510.41(d) of this title (relating to Facility Functions and Services); and

(C) the hospital's mandatory overtime policy required by §568.63(k) of this chapter (relating to Nursing Services).

(3) An RN and LVN shall receive training in the process for reporting concerns regarding the adequacy of the staffing plan, as described in §568.63(h) of this chapter.

(4) A staff member routinely providing treatment to, working with, or providing consultation about a patient who is younger than 18 years of age shall receive training in the aspects of growth and development (including physical, emotional, cognitive, educational and social) and the treatment needs of patients in the following age groups:

(A) early childhood (1-5 years of age);

(B) late childhood (6-13 years of age); and

(C) adolescent (14-17 years of age).

(5) A staff member routinely providing treatment to, working with, or providing consultation about a patient diagnosed with co-occurring psychiatric and substance-related disorders (COPSD) shall receive training in substance-related and addictive disorders.

(6) A staff member routinely providing treatment to, working with, or providing consultation about a geriatric patient shall receive training in the social, psychological, and physiological changes associated with aging.

(7) In accordance with Texas Health and Safety Code §572.0025(e), a pre-admission screening professional (PASP) shall receive at least eight hours of pre-admission screening and intake training, as described in subsection (c) of this section.

(8) In accordance with Texas Health and Safety Code §572.0025(e), a staff member whose responsibilities include conducting the hospital's intake process for a patient shall receive at least eight hours of pre-admission screening and intake training, as described in subsection (c) of this section.

(9) A staff member who may initiate an involuntary intervention shall receive training in and demonstrate competency in performing such interventions in accordance with 25 TAC Chapter 415,

Subchapter F (relating to Interventions in Mental Health Services) prior to performing such interventions.

(b) A staff member providing direct patient care shall maintain certification in a course developed by the American Heart Association, the American Red Cross, or the Health and Safety Institute in recognizing and caring for breathing and cardiac emergencies. The course shall teach the following skills appropriate to the age of the hospital's patients:

- (1) rescue breathing, with and without devices;
- (2) airway obstruction;
- (3) cardiopulmonary resuscitation; and
- (4) use of an automated external defibrillator.

(c) Pre-admission screening and intake training. The pre-admission screening and intake training required by subsections (a)(7) and (8) of this section shall provide instruction to staff members regarding:

- (1) assessing, interviewing, and diagnosing an individual with a mental illness and an individual diagnosed with COPSD;
- (2) obtaining relevant information about the patient, including information about finances, insurance benefits and advance directives;
- (3) explaining, orally and in writing, the patient's rights described in 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services);
- (4) explaining, orally and in writing, the hospital's services and treatment as they relate to the patient;
- (5) informing the patient in writing of the existence, telephone number, and address of the protection and advocacy system of the state of Texas; and
- (6) determining whether the patient comprehends the information provided in accordance with paragraphs (3) - (5) of this subsection.

(d) Frequency of training. A hospital shall provide the training described in subsection (a) of this section, periodically, as follows.

(1) A staff member shall receive the patient rights training required by subsection (a)(1)(D)(iii) of this section:

- (A) before assuming responsibilities at the hospital; and
- (B) annually throughout the staff member's employment or association with the hospital.

(2) A staff member shall receive the training in identifying, preventing, and reporting abuse and neglect of patients and unprofessional or unethical conduct required by subsection (a)(1)(D)(i) of this section annually throughout the staff member's employment or association with the hospital, as set forth in Texas Health and Safety Code §161.133.

(3) A staff member shall receive the training required by subsections (a)(1)(D) and (a)(2) - (5) of this section:

- (A) before assuming responsibilities at the hospital; and
- (B) annually throughout the staff member's employment or association with the hospital.

(4) A staff member shall have the certification required by subsection (b) of this section:

- (A) before assuming responsibilities at the hospital; or

(B) not later than 30 days after the staff member is hired by the hospital if another staff member who has such certification is physically present and on-duty on the same unit on which the uncertified staff member is on-duty.

(5) A pre-admission screening professional (PASP) shall receive the training required by subsection (a)(7) of this section:

- (A) before the PASP conducting a pre-admission screening; and
- (B) annually throughout the PASP's employment or association with the hospital.

(6) A staff member shall receive the training required by subsection (a)(8) of this section:

- (A) before conducting the intake process; and
- (B) annually throughout the staff member's employment or association with the hospital.

(7) A staff member shall receive the training required by subsection (a)(9) of this section at the intervals described in 25 TAC Chapter 415, Subchapter F .

(e) Documentation of training.

(1) A hospital shall document that a staff member has successfully completed the training described in subsection (a) of this section including:

- (A) the date of the training;
- (B) the length of the training session; and
- (C) the name of the instructor.

(2) A hospital shall maintain certification or other evidence issued by the American Heart Association, the American Red Cross or the Health and Safety Institute that a staff member has successfully completed the training described in subsection (b) of this section.

(f) Performance in accordance with training. A staff member shall perform the staff member's responsibilities in accordance with the training and certification required by this section.

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

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SUBCHAPTER H. PERFORMANCE IMPROVEMENT

26 TAC §§568.141 - 568.144

STATUTORY AUTHORITY

The new sections 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 ser-

vices by the health and human services agencies, and Texas Health and Safety Code Chapter 572 and Chapter 161.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

SUBCHAPTER L. ELECTRONIC SUBMISSIONS AND COMMUNICATIONS

28 TAC §1.1301, §1.1302

The Commissioner of Insurance adopts new 28 TAC §1.1301, relating to electronic submissions made to the Texas Department of Insurance (TDI), and new §1.1302, relating to electronic communications from TDI. New §1.1301 is adopted without changes to the proposed text published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7977) and will not be republished. TDI revised the text of new §1.1302, as published in the November 6, 2020 (45 TexReg 7977) issue, in response to public comments. Section 1.1302 will be republished.

REASONED JUSTIFICATION. New §1.1301 is added to generally authorize persons to make any submissions to TDI electronically. New §1.1302 is added to recognize that TDI may officially communicate by email with regulated persons. Section 1.1302 requires regulated persons to designate an email address for such communications from TDI. By allowing electronic submissions and communications instead of paper submissions and communications by mail, the new sections will reduce the regulatory burden and costs imposed on regulated persons and promote administrative efficiency and reduce costs for TDI.

Section 1.1301. Section 1.1301(a) generally authorizes persons to make submissions to TDI electronically, unless statute requires a method of submission that is not electronic. Examples of statutory provisions that require a non-electronic method of submission to TDI include Insurance Code §§84.046(2)(B), 541.255, 2651.151, and 2651.252. Subsection (a) supersedes any other provision in 28 TAC Part 1. Examples of rules that are superseded include 28 TAC §§5.9941, 12.101, 13.403, and 26.400.

Section 1.1301(b) states that an electronic submission must be made in accordance with any procedure established by statute or rule for that electronic submission. Examples of procedures for electronic submission established by statute include Insurance Code §1467.051 and §1467.084, which require a request for mediation or arbitration to be electronically submitted through a por-

tal on TDI's website. Examples of procedures for electronic submission established by rule include 28 TAC §3.1760(a), which requires life settlement data reports to be submitted to a particular email address, and 28 TAC §5.9310(f), which requires electronic filings through the NAIC System for Electronic Rate and Form Filing (SERFF). If a procedure for the electronic submission is not established by statute or rule, the electronic submission must be made as specified on TDI's website.

Section 1.1302. Section 1.1302(a) defines for this section the term "regulated person" to encompass all persons regulated by the Commissioner and the State Fire Marshal. In response to comment, the text of subsection (a) as proposed has been changed by replacing the word "including" with "meaning" and adding "or other authorization" to capture the appropriate persons regulated by TDI.

Section 1.1302(b) specifies that TDI may send official communications to the email address designated by a regulated person, unless statute requires a different method of communication. Examples of statutory provisions that require a different method of communication include Insurance Code §§81.002, 804.203, and 1201.007.

Section 1.1302(c) requires all regulated persons to provide to TDI an email address designated for the receipt of official communications from TDI, except as provided by §1.1302(d). Regulated persons should provide the email address as specified on TDI's website. If emails may no longer be received at a designated email address, the regulated person must notify TDI and provide a new email address within 10 business days. In response to comment, the text of subsection (c) as proposed has been changed by replacing the acronym "TDI" with "the department" for consistency with the rest of the rule text.

Section 1.1302(d) states that notice or service requirements are satisfied if TDI communicated by email under the section, unless statute or 28 TAC §1.90 requires a different method of notice or service. Examples of statutory provisions that require a different method of notice include Insurance Code §81.002 and §1201.007.

Section 1.1302(e) provides an avenue for a regulated person to be relieved of the requirements of §1.1302, if the regulated person notifies TDI that the regulated person does not have the technological capability to maintain an email address designated for official department communications or for other good reason does not wish to receive communications by email. In response to comment, the text of subsection (e) as proposed has been changed by replacing the acronym "TDI" with "the department" for consistency with the rest of the rule text.

In response to comment, the text of §1.1302 as proposed has been changed by adding subsection (f). Subsection (f) makes the requirement under subsection (c) that all regulated persons provide to TDI an email address designated for receipt of official communications applicable beginning January 1, 2022. This is intended to give regulated persons time to prepare for the shift to receiving electronic communications from TDI.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from eight commenters. The Insured Retirement Institute and Office of Injured Employee Counsel commented in support of the proposal. The American Property Casualty Insurance Association, Insurance Council of Texas, McDermott Will & Emery, Texas Association of Health Plans, Texas Association of Life & Health Insurers, and Texas

Mutual Insurance Company commented in general support of the proposal but recommended certain changes.

After the end of the comment period stated in the proposal, TDI also received a written comment from a ninth commenter. Because the comment was not submitted within the stated comment period, it is not addressed in this order.

General Comments

Comment: While not requesting a public hearing, the Insurance Council of Texas and American Property Casualty Insurance Association also suggested that TDI have a stakeholder meeting prior to the adoption of the rules due to certain concerns.

Agency Response: While TDI understands some of the concerns raised and encourages stakeholders to participate in discussions as TDI implements this rule, TDI does not believe it is necessary to delay the adoption of the rules to address these concerns. To address some of the concerns regarding implementation, TDI is making the requirement under §1.1302(c) that all regulated persons provide to TDI an email address designated for receipt of official communications applicable beginning January 1, 2022.

Comments on §1.1301.

Comment: One commenter recommends that TDI allow for electronic submissions using a technology that provides for secure transmission to TDI.

Agency Response: TDI agrees that electronic submissions of confidential or proprietary information should be made using a secure method of transmission but declines to modify the language of §1.1301. Any necessary security measures will be established during implementation.

Comment: One commenter asks TDI to identify or give examples of what statutes, if any, require non-electronic filing in the rule.

Agency Response: TDI disagrees that specific statutes should be identified in the rule text but has given some examples in the reasoned justification section of this adoption order. Identifying specific statutes in the rule text would require this rule to be regularly updated to remain accurate.

Comment: One commenter asks that TDI's website provide a clear link on filing submissions and asks that filing parties receive a verification when submissions are made by email. The commenter also notes that filings made by email may not get information to a reviewer quickly.

Agency Response: TDI appreciates the comment and will take these recommendations into consideration in the development and improvement of our internal processes.

Comment: One commenter asks why §1.1301(b) states that a filing "must" be made in accordance with a statute *or rule*, but §1.1301(a) only mentions statute. The commenter requests that the rule identify those rules or exceptions that require some type of electronic filing.

Agency Response: TDI disagrees that specific statutes or rules should be identified in the rule text. To continue to be accurate, it would need to be frequently updated as TDI's rules are changed. Section 1.1301(a) provides that any submission to TDI may be made electronically and is intended to supersede any other rule in 28 TAC Part 1. But it cannot, and is not intended to, supersede any statute that requires a non-electronic method of submission.

Section 1.1301(b) addresses a related, but different issue--the particular procedure for making an electronic submission. Section 1.1301(b) requires that a submission made electronically be made in accordance with the procedure set out in statute or rule for that electronic submission. Examples of statutes that prescribe a specific procedure for electronic submissions are Insurance Code §1467.051 and §1467.084, which require a request for mediation or arbitration to be electronically submitted through a portal on TDI's website. As the commenter pointed out, an example of a rule prescribing a specific procedure for electronic submissions is 28 TAC §5.9310(f), which requires electronic filings through the NAIC System for Electronic Rate and Form Filing (SERFF). For those examples, §1.1301(b) requires that electronic submissions continue to be made in accordance those specific procedures established by those provisions. But if no specific procedure for an electronic submission is set out in statute or rule, then the procedure set out on TDI's website should be followed.

Comments on §1.1302.

Comment: One commenter expresses concern that the following portion of the definition of "regulated person" in §1.1302(a) is overly broad: "holding an authorization, *including* a permit, license, certificate of authority, or certificate of registration, issued or existing under the Commissioner's or the State Fire Marshal's authority or the Insurance Code" (emphasis added).

Agency Response: TDI agrees and has changed the word "including" to "meaning" and added "other authorization" to capture the appropriate regulated persons. This is consistent with the definition of "authorization" in Insurance Code §82.001.

Comment: Two commenters ask that TDI clarify how confidential and proprietary information will be secured when using the provided email address. The commenters recommend that TDI take measures to secure communications, including adopting encryption in transit for the transmission of confidential and proprietary information.

Agency Response: TDI agrees that electronic communications of confidential or proprietary information should be made using a secure method of transmission but declines to modify the language of §1.1302. Any necessary security measures will be established during implementation.

Comment: One commenter recommends replacing "TDI" in three places with "the department."

Agency Response: TDI partially agrees with the comment and has replaced "TDI" with "the department" in §1.1302(c) and (e), but not in §1.1302(b) because that instance is a quote from the title of 28 TAC §1.90.

Comment: One commenter requests confirmation that §1.1302(b) would not supersede State Office of Administrative Hearing (SOAH) rules in 1 TAC Chapter 155, particularly the requirements of §155.105 to serve parties and their representatives electronically through the electronic filing manager if the email address of the party or attorney to be served is on file.

Agency Response: TDI confirms that §1.1302(b) is not intended to supersede any provision outside of 28 TAC Part 1, including 1 TAC Chapter 155. Section 1.1302(b) is also not intended to supersede 28 TAC §1.90, which contains the joint memorandum of understanding between TDI and SOAH concerning procedures for contested cases before SOAH.

Comment: One commenter states that the term "official communications" in §1.1302(b) is vague and not defined. The commenter asks TDI to specify the type of communications it intends to send electronically.

Agency Response: TDI disagrees with specifying the various types of communications that it intends to send electronically. The term "official communications" is not intended to be a limiting term. It is intended to encompass all communications that TDI may send or is required to send in order to carry out its official duties under statute or rule.

Comment: One commenter asserts that the phrase "unless a statute requires a different form of communication" in §1.1302(b) is vague and should identify any statutes that require a different form of communication.

Agency Response: TDI disagrees that specific statutes should be identified in the rule, but has given some examples in the reasoned justification section of this adoption order. Identifying specific statutes would require this rule to be regularly updated to remain accurate.

Comment: One commenter recommends allowing regulated entities to provide three to five email addresses instead of only one in §1.1302(c).

Agency Response: TDI declines to modify §1.1302(c). Communicating with regulated persons using multiple email addresses could complicate those communications and potentially lead to inadvertent errors when sending communications. TDI notes that there are technological methods that regulated persons may use to accomplish the same result, such as designating an email address that automatically forwards emails to others or designating a general email address that multiple people have access to.

Comment: One commenter requests guidance as to how it can assure that the appropriate people within a company see the notification in a timely manner in case the person with the designated email is either absent or has left the company. The commenter notes that one possibility may be for a company to set up an email address that would automatically forward to a list of people within the company. In related comments, two other commenters point out that large companies may need to provide a single portal email address for communications rather than naming one or more individuals, but other companies may prefer to use the names of individuals or agents for service of process. One of the commenters suggests allowing for these differing methods in the rule or providing a forum on how this should be implemented.

Agency Response: TDI understands the concern and intends §1.1302(c) to be a flexible provision under which regulated persons can determine for themselves what email address makes the most sense to designate. A regulated person could designate an organizational or individual email address or the email address of an agent for the service of process. As noted in the previous comment response, there are technological methods that regulated persons may use to ensure the appropriate people within an organization see any email sent from TDI in a timely manner, including designating an email address that automatically forwards emails to others or designating a general email address that the appropriate people have access to. TDI also encourages stakeholders to provide input as the rule is implemented.

Comment: One commenter requests clarification on whether individual insurance company employees who may hold a separate

license as an adjuster, agent, risk manager, or other license type will need to provide a separate email address or whether the company can have a single portal for all official questions for the insurer and all its employees.

Agency Response: As explained in the previous comment response, TDI intends §1.1302(c) to be a flexible provision. It will be up to each regulated person to determine which email address to designate.

Comment: One commenter states that the requirement to provide an email address for official communications in §1.1302(c) should be directed at licensees.

Agency Response: TDI agrees if the commenter means "licensees" to encompass those holding an authorization from TDI, meaning a permit, license, certificate of authority, or certificate of registration, issued or existing under the Commissioner's or the State Fire Marshal's authority or the Insurance Code. TDI has modified the definition of "regulated person" in §1.1302(a) to change the word "including" to "meaning" and added "other authorization" to capture the appropriate regulated persons.

Comment: One commenter indicates the phrase "unless a different method of notice or service is required by statute or §1.90 of this title" in §1.1302(c) is vague and should identify any statutes that fit within that exception.

Agency Response: TDI disagrees that specific statutes should be identified in the rule text, but has given some examples in the reasoned justification section of this adoption order. Identifying specific statutes would require this rule to be regularly updated to remain accurate.

STATUTORY AUTHORITY. TDI adopts §1.1301 and §1.1302 under Insurance Code §36.001 and Government Code §417.005.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Government Code §417.005 provides that the Commissioner may adopt necessary rules to guide the State Fire Marshal and fire and arson investigators commissioned by the State Fire Marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the Commissioner.

§1.1302. Electronic Communications from the Texas Department of Insurance.

(a) In this section, "regulated person" means an individual, corporation, association, partnership, or other artificial person holding an authorization, meaning a permit, license, certificate of authority, certificate of registration, or other authorization, issued or existing under the Commissioner's or the Texas State Fire Marshal's authority or the Insurance Code.

(b) Notwithstanding any other provision in Part 1 of this title (relating to Texas Department of Insurance) other than §1.90 of this title (relating to Joint Memorandum of Understanding (MOU) between Texas Department of Insurance (TDI) and State Office of Administrative Hearings (SOAH) Concerning Procedures for Contested Cases before SOAH and Responsibilities of Each Agency), the department may send official communications to the email address designated for such communications by a regulated person, unless statute requires a different method of communication.

(c) Except as provided by subsection (e) of this section, all regulated persons must provide an email address that is designated

for receipt of official department communications. Regulated persons should provide the email address as specified on the department's website. If communications may no longer be received at the designated email address, the regulated person must notify the department and designate a new email address within 10 business days.

(d) Notice or service sent by email under this section satisfies any notice or service requirements, unless a different method of notice or service is required by statute or §1.90 of this title.

(e) If a regulated person does not have the technological capability to maintain an email address designated for official department communications, or for good reason does not wish to receive communications by email from the department, the regulated person should notify the department as specified on the department's website regarding address changes.

(f) Subsection (c) of this section is applicable beginning January 1, 2022.

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 May 3, 2021.

TRD-202101739

James Person

General Counsel

Texas Department of Insurance

Effective date: May 23, 2021

Proposal publication date: November 6, 2020

For further information, please call: (512) 676-6587

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 355. RESEARCH AND PLANNING FUND

SUBCHAPTER C. REGIONAL WATER PLANNING GRANTS

31 TAC §§355.91 - 355.93

The Texas Water Development Board ("TWDB" or "board") adopts amendments to 31 TAC §§355.91 - 355.93. The proposal is adopted without changes to the text as published in the February 26, 2021, issue of the *Texas Register* (46 TexReg 1347). The rules will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The purpose of the amendments to 31 TAC Chapter 355 is to address concerns raised by the regional water planning groups, which was also identified as a recommendation from the Inter-regional Planning Council, established by House Bill 807 of the 86th Legislature, to allow for the limited reimbursement of certain labor costs for regional water planning administrative agents. The revisions also clarify language throughout the section.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Subchapter C. Regional Water Planning Grants.

Section 355.91. Notice of Funds and Submission and Review of Applications.

Section 355.91(a) is revised to remove the requirement that the request for funding applications be published in the *Texas Register*. Eligible applicants are limited to the Political Subdivision designated by each regional water planning group. These entities will be notified directly by the Executive Administrator (EA) that funding is available.

Section 355.91(b) is revised to add clarity to the rule.

Section 355.91(c) is revised to comply with §357.21 as modified by the current rulemaking project.

New §355.91(d) is added to clarify the statutory requirements to be included in a funding application.

Renumbered §355.91(e) is revised to remove the requirement for multiple applications during the five-year planning cycle. The Board has discretion to amend the regional water planning grant contracts to add additional funds and scope of work tasks without a new application for funding during the same planning cycle.

Renumbered §355.91(f) is revised to closely adhere to the statutory requirements.

Section 355.92. Use of Funds.

Section 355.92(a)(5) is renumbered as §355.92(a)(4) and is revised to clarify that the EA may deem an analysis of benefits and costs of water management strategies eligible for funding at the EA's discretion and specifies items the EA must consider. Section 355.92(d) is removed, as the EA consideration is now addressed in new §355.92(a)(4).

Section 355.92(a)(4) is renumbered as §355.92(b) and provides clarification on ineligible expenses for RWPG members and the RWPG's designated political subdivisions.

Section 355.92(b) is renumbered as §355.92(c) and clarifies certain eligible administrative costs that are specifically limited by the regional water planning grant contract. This includes a new eligible cost for limited reimbursement of the RWPG's political subdivision's personnel costs associated with RWPG meetings and hearings.

Section 355.92(c) is renumbered as §355.92(d) and is revised to clarify the subcontracting process is through the RWPG's political subdivision.

Section 355.93. Board Consideration of Applications; Applicant's Responsibilities; and Contract.

Sections 355.93(a), (b), and (c) are revised to clarify rule language.

Section 355.93(d) is revised to clarify that the contracts and subcontracts for regional water planning must, at the direction of the EA, include either a scope of work provided by the EA or a scope of work developed by the RWPG if requested by the EA and a budget subdivided into task budgets.

REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Govern-

ment Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to define eligible expenses and clarify existing language.

Even if the rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed a standard set by federal law or any other federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under the authority of Texas Water Code §16.053. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify language and to provide for some reimbursement of labor costs for regional water planning administration.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the board further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENT:

No comments were received.

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The rulemaking is adopted under the additional authority of Texas Water Code §15.403 which provides the TWDB with the authority to adopt rules necessary to carry out the purposes of the Research and Planning Program and Texas Water Code §15.4061 which provides the TWDB with the authority to enter into contracts with political subdivisions and pay from the research and planning fund, all or part of the cost of developing or revising Regional Water Plans in accordance with the statute.

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 May 7, 2021.

TRD-202101796

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: May 27, 2021

Proposal publication date: February 26, 2021

For further information, please call: (512) 463-7686



CHAPTER 357. REGIONAL WATER PLANNING

SUBCHAPTER B. GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS

31 TAC §357.21

The Texas Water Development Board ("TWDB" or "board") adopts an amendment to 31 TAC §357.21. The proposal is adopted with changes to the text as published in the February 26, 2021, issue of the *Texas Register* (46 TexReg 1351). The rule will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The purpose of this rule change is to simplify regional water planning public notice requirements and remove redundant references in the section to notice requirements. The revisions closely align with the new flood planning public notice rules, where applicable, to reduce confusion among public notice requirements of the two regional planning processes administered by the agency.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Subchapter B. Guidance Principles and Notice Requirements.

§357.21. Notice and Public Participation.

Subsections (b) - (e) are rescinded and the requirements within those subsections are rewritten as (g) - (h). The language in current subsection (e) is fully removed to no longer require a costly public notice for a non-competitive funding process.

New subsection (b) requires that each Regional Water Planning Group (RWPG) maintain a website where public notice and meeting materials are posted. This is currently already required by the regional water planning contract scopes of work.

New subsection (c) clarifies that oral public comment must be accepted at each public meeting or hearing and the RWPGs must specify when and how the public may submit written comment.

New subsection (d) requires the RWPGs to maintain a list of interested parties of who will receive electronic notice of public meetings and hearings.

New subsections (e) - (f) specify the minimum requirements for all meeting and hearing notices. RWPGs may add additional notice requirements above the requirements specified by rule to their bylaws. Subsection (e) is revised to correct a typographical error.

New subsection (g)(1) specifies that regular RWPG meetings, and any committee or subcommittee meetings, are subject to a minimum seven-day public notice. Additional RWPG actions that would be subject to the seven-day notice are specified in this rule. This revises the previous requirement that regular RWPG meetings occur with a minimum three-day public notice. A seven-day public notice allows for increased public transparency of upcoming meetings. As referenced in the TWDB's Best Practices Guide for RWPG Political Subdivisions, the TWDB's Regional Water Planning Public Notice tool, developed in coordination with a RWPG political subdivision, recommends providing public notice at least seven days prior to an RWPG meeting. The rule also specifies the minimum time for posting meeting materials as three days prior to and seven days following a public meeting. Subsection (g)(1) is revised to clarify that materials must be posted on the RWPG's website.

New subsection (g)(2) specifies certain actions that are subject to a minimum 14-day public notice and public comment period. The rule also specifies the minimum time for posting meeting materials as seven days prior to and 14 days following the public meeting. This subsection revises the previous 14-day public notice requirements by requiring adoption of the final regional water plan to be subject to a 14-day notice, removes the requirement for a 14-day follow up comment period after an RWPG takes action, and removes the requirement to submit public comments on minor amendments to the TWDB from the public notice section. The requirement to provide public comments on minor amendments to the TWDB will be moved to §357.50 during a subsequent rulemaking to occur in 2021. Subsection (g)(2) is revised to clarify that materials must be posted on the RWPG's website.

New subsection (g)(3) specifies public hearings requirements for declarations to pursue simplified planning and major amendments. These hearings are subject to a minimum 30-day public notice and public comment period prior to and after the hearings. This subsection revises the previous 30-day notice requirements for these hearings in that the notice requirements in Texas Water Code (TWC) §16.053(h) are no longer applied to these hearings to reduce the costly expense associated with a large mailout and posting notice in a newspaper. RWPGs may continue to provide newspaper notices and notify additional entities at their discretion and in accordance with their bylaws. Subsection (g)(3) is revised to clarify that materials must be posted on the RWPG's website.

New subsection (h) specifies public meeting and hearing requirements for pre-planning public meetings to obtain input on development of the next RWP and holding hearings on the Initially

Prepared Plan (IPP) or making revisions to RWPs based on interregional conflict resolutions. These hearings are subject to public notice provision in TWC §16.053(h), including posting notice in a newspaper and providing a mailed notice to certain entities as specified in the rule. This subsection also requires notification of all adjacent RWPGs, which is an additional requirement not included in TWC §16.053(h). This subsection changes the 60 day "public comment" period on the IPP to a 60 day "written comment" period on the IPP. This will change the comment period of state and public agencies from 90 to 60 days in order to simplify the deadlines to submit written comment to the RWPGs. TWDB's 120-day comment period is not altered by this rule revision. The subsection also clarifies that if more than one hearing is held by an RWPG on the IPP, the notice and public comment periods apply to the date of the first hearing. The subsection adds in the requirements for RWPG hearings on making revisions to their RWPs based on interregional conflict resolutions. The requirements for this type of hearing are specified in TWC §16.053(h) but were not previously addressed in rule. The requirement to post notice for these meetings in the *Texas Register* is also removed. Subsection (h)(8) is added to clarify the minimum posting requirements for materials other than IPPs.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to simplify regional water planning public notice requirements and remove redundant references in the rule related to notice requirements.

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed the a standard set by federal law or any other federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under the authority of Texas Water Code §16.053. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code,

Chapter 2007. The specific purpose of this rule is to simplify regional water planning public notice requirements and remove redundant references in the section to notice requirements.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the board further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the rule would be in effect, the rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

PUBLIC COMMENTS

The following written comment was received from the Texas Press Association.

Comment

The Texas Press Association asserted that the requirement to post notice in a newspaper for declarations of intent to pursue simplified planning and major amendments are set forth in statute and citizens would no longer be informed of these meetings if the requirement to post notice in newspapers are removed.

Response

The requirement to post notice in a newspaper set forth in statute (TWC §16.053(h)(8)) is not applicable for hearings regarding declarations of intent to pursue simplified planning and major amendments. At a minimum, notices for these types of hearings are still required to be posted on the website for the RWPG and the Secretary of State website. The proposed rules continue to require newspaper notices for such meetings specified in statute as requiring newspaper notices. No change has been made in response to this comment.

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053, which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute.

Texas Water Code §16.053 is affected by this rulemaking.

§357.21. *Notice and Public Participation.*

(a) Each RWPG and any committee or subcommittee of an RWPG are subject to Chapters 551 and 552, Government Code. A copy of all materials presented or discussed at an open meeting shall be made available for public inspection prior to and following the meetings and shall meet the additional notice requirements when specifically referenced as required under other subsections. In accordance with Texas Water Code §16.053(r), certain information regarding water infrastructure facilities is exempted from the Public Information Act, Texas Government Code, Chapter 552. In addition to the notice requirements of Chapter 551, Government Code, the following requirements apply to RWPGs.

(b) Each RWPG shall create and maintain a website that they will use to post public notices of all its full RWPG, committee, and subcommittee meetings and make available meeting agendas and related meeting materials for the public, in accordance with this section.

(c) Each RWPG shall provide a means by which it will accept written public comment prior to and after meetings. The RWPGs must also allow oral public comment during RWPG meetings and hearings.

(d) Each RWPG shall solicit interested parties from the public and maintain a list of emails of persons or entities who request to be notified electronically of RWPG activities.

(e) At a minimum, notices of all meetings, meeting materials, and meeting agendas shall be sent electronically, in accordance with the timelines and any additional notice requirements provided in subsections (g)(1) - (3) and (h) of this section or any additional notice requirements in the RWPG bylaws, to all voting and non-voting RWPG members and any person or entity who has requested notice of RWPG activities. Notice must also be provided to the following:

(1) if a recommended or Alternative WMS that is located outside of the RWPG is being considered, the RWPG where the recommended or Alternative WMS is located must also receive notice of any meeting or hearing where action or public input may be taken on the recommended or Alternative WMS.

(2) for hearings on declarations of intent to pursue simplified planning, if an RWPG shares a water supply source, WMS, or WMSP with another RWPG, the RWPG declaring intent to pursue simplified planning must notify the RWPG with shared source, WMS, or WMSP.

(3) each project sponsor of an infeasible WMS or WMSP must be provided notice of any meeting or hearing where action may be taken on the infeasible WMS or WMSP.

(f) At a minimum, all meeting and hearing notices must be posted to the RWPG website and on the secretary of state website and must include:

- (1) the date, time, and location of the meeting;
- (2) a summary of the proposed action(s) to be taken;

(3) the name, telephone number, email address, and physical address of a contact person to whom questions or requests for additional information may be submitted; and

(4) a statement of how and when comments will be received from the members and public.

(g) In addition to subsections (a) - (f) of this section, and the notice requirements of Chapter 551, Government Code, the following requirements apply:

(1) at a minimum, notice must be provided at least seven days prior to the meeting, and meeting materials must be made available on the RWPG website at least three days prior to and seven days following the meeting when the planning group will take the following actions:

(A) regular RWPG meetings and any RWPG committee or subcommittee meetings;

(B) approval of requests for funds from the Board;

(C) amendments to the scope of work or budget included in the regional water planning grant contract between the political subdivision and TWDB;

(D) approval of revision requests for draft population projections and Water Demand projections;

(E) adoption of the IPP;

(F) approval to submit a request to EA for approval of an Alternative WMS substitution or to request an EA determination of a minor amendment;

(G) declaration of implementation of simplified planning following public hearing on intent to pursue simplified planning;

(H) initiation of major amendments to RWPs and adoption of major amendments following a public hearing on the amendment;

(I) approval of replacement RWPG members to fill voting and non-voting position vacancies; and

(J) any other RWPG approvals required by the regional water planning grant contract between TWDB and the political subdivision.

(2) at a minimum, notice must be provided at least 14 days prior to the meeting, written comment must be accepted for 14 days prior to the meeting and considered by the RWPG members prior to taking the associated action, and meeting materials must be made available on the RWPG website for a minimum of seven days prior to and 14 days following the meeting, when the planning group will take the following actions:

(A) approval to submit revision requests to officially adopted Board population and Water Demand projections;

(B) approval of process of identifying potentially feasible WMSs and presentation of analysis of infeasible WMSs or WMSPs;

(C) approval to submit the Technical Memorandum;

(D) adoption of the final RWP;

(E) approval to substitute Alternative WMSs; and

(F) adoption of minor amendments to RWPs.

(3) at a minimum, notice must be provided at least 30 days prior to the hearing, written comment must be accepted for 30 days prior to and following the date of the hearing and considered by the RWPG members prior to taking the associated action, and meeting ma-

terials must be made available on the RWPG website for a minimum of seven days prior to and 30 days following the hearing, when the planning group will receive input from the public on the following items:

(A) declarations to pursue simplified planning; and

(B) major amendments to RWPs.

(h) when holding pre-planning public meetings to obtain public input on development of the next RWP, holding hearings on the IPP, or making revisions to RWPs based on interregional conflict resolutions, in addition to the requirements of subsection (e) of this section, the following additional public notice and document provisions must be met per TWC §16.053(h):

(1) notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA before the 30th day preceding the date of the public meeting or hearing.

(2) at a minimum, notice must be provided at least 30 days prior to the meeting or hearing.

(3) written comments to be accepted as follows:

(A) written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and

(B) at least 60 days following the date of the public hearing on an IPP.

(4) if more than one hearing on the IPP is held, the notice and comment periods apply to the date of the first hearing.

(5) additional entities to be notified by mail under this subsection include:

(A) each adjacent RWPG;

(B) each mayor of a municipality, located in whole or in part in the RWPA, with a population of 1,000 or more or which is a county seat;

(C) each county judge of a county located in whole or in part in the RWPA;

(D) each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission; and

(E) each Retail Public Utility, defined as a community water system, that serves any part of the RWPA or receives water from the RWPA based upon lists of such entities obtained from the Commission; and

(F) each holder of record of a water right for the use of surface water the diversion of which occurs in the RWPA based upon lists of such water rights holders obtained from the Commission.

(6) the public hearings shall be conducted at a central location readily accessible to the public within the regional water planning area.

(7) RWPGs shall make copies of the IPP available for public inspection at least 30 days before the required public hearing by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA. The locations of such copies shall be included in the public hearing notice. For distribution of the IPP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate public library and location

in the county courthouse to ensure maximum accessibility to the public during business hours. According to the capabilities of the facility, the RWPG may provide the copy electronically, on electronic media, through an internet web link, or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on websites and providing notice of such posting. The public inspection requirement in this subsection applies only to IPPs; adopted RWPs are only required to be submitted to the Board pursuant to Texas Water Code, §16.053(i).

(8) Any additional meeting materials associated with meetings in this subsection must be made available on the RWPG website for a minimum of seven days prior to and 30 days following the meeting or hearing.

(i) All notice periods given are based on calendar days.

(j) Each RWPG shall include a statement in their draft and final adopted RWPs regarding the RWPG's conformance with this section.

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 May 7, 2021.

TRD-202101797

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: May 27, 2021

Proposal publication date: February 26, 2021

For further information, please call: (512) 463-7686





REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which

invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the Department) files this notice of intent to review Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter H, Requests for Public Information. This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Skyler Shafer, Assistant General Counsel, at Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847 or by email at skyler.shafer@texasagriculture.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*.

TRD-202101798

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Filed: May 7, 2021



The Texas Department of Agriculture (the Department) files this notice of intent to review Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter K, Employee Training Rules. This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Danielle Mitchell, Assistant General Counsel, at Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847 or by email at danielle.mitchell@texasagriculture.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*.

TRD-202101799

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Filed: May 7, 2021



Adopted Rule Reviews

Texas Board of Professional Geoscientists

Title 22, Part 39

In accordance with Government Code §2001.039, the Texas Board of Professional Geoscientists adopts its review for 22 TAC Chapters 850 and 851, as follows:

Chapter 850

Subchapter A (Authority and Definitions)

Subchapter B (Organization and Responsibilities)

Subchapter C (Fees)

Subchapter D (Advisory Opinions)

Chapter 851

Subchapter A (Definitions)

Subchapter B (P.G. Licensing, Firm Registration, and GIT Certification)

Subchapter C (Code of Professional Conduct)

Subchapter D (Compliance and Enforcement)

Subchapter E (Hearings--Contested Cases and Judicial Review)

The notice of proposed review was published in the January 8, 2021, of the *Texas Register* (46 TexReg 325). TBPG received no comments regarding the review.

The Texas Board of Professional Geoscientists (TBPG) has determined that the reasons for initially adopting these chapters continue to exist. TBPG readopts these rules in their entirety, with the exception of 22 TAC §851.154 and subject to any proposed amendments, repeals, and new rules which will be proposed separately in a future edition of the *Texas Register*.

These rules are adopted pursuant to the authority of Occupations Code, section 1002.151, which authorizes the board to adopt and enforce rules consistent with the Texas Geoscience Practice Act (Act), and necessary for the performance of its duties.

This concludes the TBPG's review of Chapters 850 and 851.

TRD-202101791

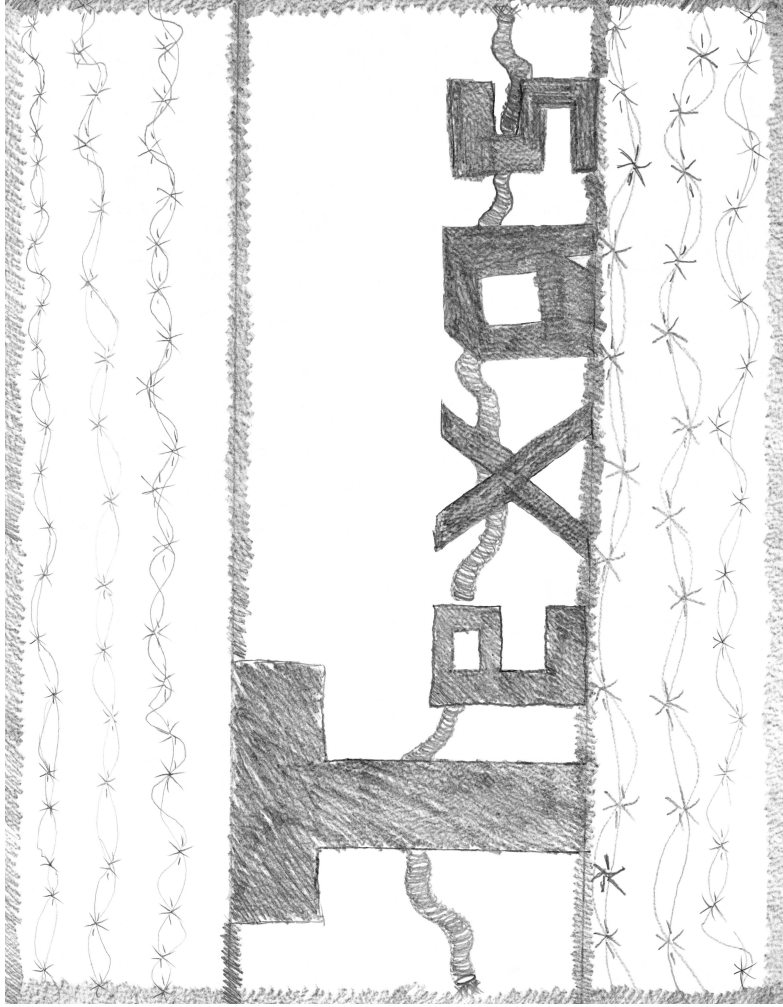
Rene Truan

Executive Director

Texas Board of Professional Geoscientists

Filed: May 6, 2021





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.

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 05/17/21 - 05/23/21 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 05/17/21 - 05/23/21 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202101850

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 11, 2021



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 22, 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 22, 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: ACME BRICK COMPANY; DOCKET NUMBER: 2020-1085-AIR-E; IDENTIFIER: RN100220672; LOCATION: Sealy, Austin County; TYPE OF FACILITY: brick manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 9540, Special Conditions Number 1, Federal Operating Permit Number O1149, General Terms and Conditions and Special Terms and Conditions Number 11, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: \$4,762; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: ALICE STAR, LLC dba Kwik Pantry; DOCKET NUMBER: 2020-0393-PST-E; IDENTIFIER: RN102457413; LOCATION: Alice, Jim Wells 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 cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$5,468; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: BASF Corporation; DOCKET NUMBER: 2020-1522-AIR-E; IDENTIFIER: RN100218049; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: a chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 9513A and PSDTX641M1, Special Conditions Number 1, Federal Operating Permit Number O1927, General Terms and Conditions and Special Terms and Conditions Number 15, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: BlueLinX Corporation; DOCKET NUMBER: 2020-0044-PST-E; IDENTIFIER: RN102829124; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: out-of-service underground storage tank; RULES VIOLATED: 30 TAC §§334.7(d)(1)(A) and (B) and (3), 334.8(c)(4)(A)(vii) and (5)(B)(ii), and 334.54(e)(2), by failing to provide an amended registration for any change or additional information regarding the underground storage tanks (USTs) within 30 days from the date of the occurrence of the change or addition, and failing to comply with the applicable registration requirements at the time the temporary out of service UST system was brought back into service. In addition, failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make

available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, including dispenser sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquid or debris; 30 TAC §334.54(c)(2)(A) and TWC, §26.3475(d), by failing to ensure the integrity of the UST system by performing tank tightness and piping tightness tests prior to bringing the UST system back into operation; and 30 TAC §334.6(b)(1)(C) and §334.54(c)(2)(C), by failing to submit a construction notification form before returning the temporary out of service UST system into service; PENALTY: \$10,710; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239 6924; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(5) COMPANY: C & R WATER SUPPLY INC.; DOCKET NUMBER: 2020-1506-PWS-E; IDENTIFIER: RN101250249; LOCATION: Willis, Montgomery 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; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's Well Number 2 into service; PENALTY: \$1,575; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: CEE JAY'S, INCORPORATED dba B & B One Stop; DOCKET NUMBER: 2020-1538-PST-E; IDENTIFIER: RN101442952; LOCATION: Colorado City, Mitchell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Courtney Atkins, (512) 534-6862; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: Claude Webb; DOCKET NUMBER: 2020-1545-MSW-E; IDENTIFIER: RN110322112; LOCATION: Lumberton, Hardin County; TYPE OF FACILITY: unauthorized municipal solid waste disposal site; 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; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Crow, Stephen T; DOCKET NUMBER: 2020-1524-WOC-E; IDENTIFIER: RN105656029; LOCATION: Baird, Callahan County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Aaron Vincent (512) 239-0855; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2020-1542-AIR-E; IDENTIFIER: RN102323268; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit Number O1641, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to report all instances of deviations;

PENALTY: \$500; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Epic Permian Operating LLC; DOCKET NUMBER: 2020-1531-AIR-E; IDENTIFIER: RN100218452; LOCATION: Ozona, Crockett County; TYPE OF FACILITY: gas processing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O2677, General Terms and Conditions and Special Terms and Conditions Number 11, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(11) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2020-1402-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 18287, PSDTX730M4, and PAL7, Special Conditions Number 1, Federal Operating Permit Number O1229, General Terms and Conditions and Special Terms and Conditions Numbers 32 and 36.A, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,563; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: EYAAN, INCORPORATED dba Jiffy Mart; DOCKET NUMBER: 2020-1515-PST-E; IDENTIFIER: RN102247624; LOCATION: Corsicana, Navarro County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every 30 days; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator, Class A, Class B, and Class C; PENALTY: \$4,062; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Federal Heath Sign Company, LLC; DOCKET NUMBER: 2020-1273-AIR-E; IDENTIFIER: RN102570645; LOCATION: Jacksonville, Cherokee County; TYPE OF FACILITY: sign manufacturing plant; RULES VIOLATED: 30 TAC §116.110(a) and §116.315(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to submit an application for renewal at least six months prior to the expiration of the permit; PENALTY: \$16,000; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: Kaneka North America LLC; DOCKET NUMBER: 2020-1521-AIR-E; IDENTIFIER: RN100218841; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: plastics material and resin manufacturing plant; RULES VIOLATED: 30 TAC §101.201(b)(1)(D) and §122.143(4), Federal Operating Permit (FOP) Number O3528, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 71768, Special Conditions Number 1, FOP Number O3528, GTC and STC Number 14, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$8,385; SUPPLEMENTAL

ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,354; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Lion Elastomers LLC; DOCKET NUMBER: 2020-1544-AIR-E; IDENTIFIER: RN100224799; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: styrene-butadiene rubber manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit (FOP) Number O1224, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to report all instances of deviations; 30 TAC §122.143(4) and (15) and §122.165(a)(7), FOP Number O1224, GTC, and THSC, §382.085(b), by failing to include a signed certification of accuracy and completeness; and 30 TAC §122.210(a) and THSC, §382.085(b), by failing to submit a revision application for a FOP for those activities at a site which change, add, or remove one or more permit terms or conditions; PENALTY: \$15,500; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: LONE MOUNTAIN TRUCK LEASING, LLC; DOCKET NUMBER: 2020-1546-MSW-E; IDENTIFIER: RN100554211; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: truck leasing and vehicle maintenance facility; RULES VIOLATED: 30 TAC §330.15(a) and (c) and TWC, §26.121(a), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; and 30 TAC §328.23(d) and §330.15(e)(3), by failing to not cause used oil filters to be intentionally or knowingly placed in or accepted for disposal in a landfill permitted by the commission; PENALTY: \$4,428; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: MDC Texas Operator LLC; DOCKET NUMBER: 2020-1552-AIR-E; IDENTIFIER: RN110682044; LOCATION: Pecos, Reeves County; TYPE OF FACILITY: oil and gas production; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(18) COMPANY: Michael Lewis Barker dba Buddy's Kwik Stop; DOCKET NUMBER: 2020-1516-PST-E; IDENTIFIER: RN101433050; LOCATION: Coleman, Coleman County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to inspect the impressed cathodic protection system at least once every 60 days to ensure the rectifier and other system components are operating properly, and failing to test the cathodic protection system for operability and adequacy at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A) and (2)(B)(i)(I) and TWC, §26.3475(c)(1) and (a), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the suction piping associated with the UST system; and 30 TAC §334.606, by failing to maintain required operator training certification records and make them available for inspection upon request by agency personnel; PENALTY: \$11,452; ENFORCEMENT

COORDINATOR: Courtney Atkins, (512) 534-6862; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: Primexx Operating Corporation; DOCKET NUMBER: 2020-1511-AIR-E; IDENTIFIER: RN111060943; LOCATION: Saragosa, Reeves County; TYPE OF FACILITY: tank battery; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(20) COMPANY: Quadvest, L.P.; DOCKET NUMBER: 2020-0609-MWD-E; IDENTIFIER: RN102180411; LOCATION: Tomball, Montgomery County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015003001, Interim Effluent Limitations and Monitoring Requirements Number 4, Permit Conditions Number 2.d, and Operational Requirements Number 1, by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: \$18,007; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: SAI ISHA BUSINESS, INCORPORATED dba Diamond Mini Mart #786; DOCKET NUMBER: 2020-1166-PST-E; IDENTIFIER: RN101757623; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Terrany Binford, (512) 567-3302; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Shelbyville Water Supply Corporation; DOCKET NUMBER: 2020-1505-PWS-E; IDENTIFIER: RN101452027; LOCATION: Shelbyville, Shelby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of total chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(A)(iii) and (iv), and (B)(ix), by failing to properly maintain water works operation and maintenance records and make them available for review to the executive director upon request; and 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can easily be located during emergencies; PENALTY: \$526; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(23) COMPANY: Sherman/Grayson Hospital, LLC dba Wilson N. Jones Regional Medical Center; DOCKET NUMBER: 2019-0400-PST-E; IDENTIFIER: RN100570753; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: hospital with an emergency generator; 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 tank (UST) 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: \$5,017; ENFORCEMENT COORDINATOR:

Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: SOUTHERN FOREST PRODUCTS, L.L.C.; DOCKET NUMBER: 2020-0398-IWD-E; IDENTIFIER: RN102336757; LOCATION: Bon Wier, Newton County; TYPE OF FACILITY: sawmill and wood products manufacturing facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004241000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (5), §319.5(b), and TPDES Permit Number WQ0004241000, Effluent Limitations and Monitoring Requirements Number 1, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: \$15,854; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(25) COMPANY: The Dominion Motors, LLC; DOCKET NUMBER: 2020-1512-AIR-E; IDENTIFIER: RN111098109; LOCATION: Boerne, Bexar County; TYPE OF FACILITY: used truck dealership; RULES VIOLATED: 30 TAC §114.20(c)(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to ensure a motor vehicle is equipped with either the emission control system or devices that were originally part of the motor vehicle or motor vehicle engine, or an alternate emission control system or device prior to selling the motor vehicle; and 30 TAC §114.20(c)(3) and THSC, §382.085(b), by failing to display a notice of the prohibitions and requirements of 30 TAC §114.20 at a commercial motor vehicle sales facility in a conspicuous and prominent location; PENALTY: \$3,188; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(26) COMPANY: VERNON GAS LLC dba AllStar Fuel; DOCKET NUMBER: 2020-1539-PST-E; IDENTIFIER: RN101830826; LOCATION: Vernon, Wilbarger 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: \$3,499; ENFORCEMENT COORDINATOR: Terrany Binford, (512) 567-3302; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-202101842

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 11, 2021



Enforcement Orders

An agreed order was adopted regarding Fort Bend County Municipal Utility District No. 206, Docket No. 2020-0432-PWS-E on May 11, 2021, assessing \$713 in administrative penalties with \$142 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 Lake Livingston Water Supply Corporation, Docket No. 2020-0597-PWS-E on May 11, 2021, assessing \$6,966 in administrative penalties with \$1,393 deferred. Informa-

tion concerning any aspect of this order may be obtained by contacting Epi Villarreal, 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 Timpson, Docket No. 2020-0746-MWD-E on May 11, 2021, assessing \$2,875 in administrative penalties with \$575 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 Norel Animal Nutrition USA, Inc., Docket No. 2020-0797-AIR-E on May 11, 2021, assessing \$3,750 in administrative penalties with \$750 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 Permian Basin Materials, LLC, Docket No. 2020-0828-WQ-E on May 11, 2021, assessing \$2,625 in administrative penalties with \$525 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 Thelin Recycling Company, L.P., Docket No. 2020-0880-AIR-E on May 11, 2021, assessing \$6,000 in administrative penalties with \$1,200 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 Hudson Water Supply Corporation, Docket No. 2020-0933-PWS-E on May 11, 2021, assessing \$1,192 in administrative penalties with \$238 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 Rastex LLC, Docket No. 2020-1003-MSW-E on May 11, 2021, assessing \$1,125 in administrative penalties with \$225 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MILLER and MILLER REI FAMILY LIMITED PARTNERSHIP, Docket No. 2020-1071-PWS-E on May 11, 2021, assessing \$314 in administrative penalties with \$62 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 LCY Elastomers LP, Docket No. 2020-1091-AIR-E on May 11, 2021, assessing \$462 in administrative penalties with \$92 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Permian Basin Materials, LLC, Docket No. 2020-1121-AIR-E on May 11, 2021, assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Permian Basin Materials, LLC, Docket No. 2020-1127-AIR-E on May 11, 2021, assessing \$2,250 in administrative penalties with \$450 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 3009 Water Company, L.L.C., Docket No. 2020-1184-PWS-E on May 11, 2021, assessing \$150 in administrative penalties with \$30 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 Texas Juvenile Justice Department, Docket No. 2020-1203-PST-E on May 11, 2021, assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Brazoria County Conservation and Reclamation District No. 3, Docket No. 2020-1243-WQ-E on May 11, 2021, assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, 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 YES Management, LLC, Docket No. 2020-1286-PWS-E on May 11, 2021, assessing \$165 in administrative penalties with \$33 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, 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 Falls Transport LLC, Docket No. 2020-1298-PST-E on May 11, 2021, assessing \$1,005 in administrative penalties with \$201 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, 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 SHRESTHA INVESTMENT INC. dba Gateway 30, Docket No. 2020-1354-PST-E on May 11, 2021, assessing \$2,438 in administrative penalties with \$487 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.

TRD-202101858

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 12, 2021



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 164475

APPLICATION. Sunrise Redi Mix LLC, P.O. Box 1299, Springtown, Texas 76082-1299 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number

164475 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at 141 Graham Road, New Fairview, Wise County, Texas 76078. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.101861&lng=-97.466306&zoom=13&type=r>. This application was submitted to the TCEQ on March 25, 2021. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on May 3, 2021.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Tuesday, June 22, 2021, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 627-614-099. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the hearing for assistance in accessing the hearing and participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (631) 992-3221 and enter access code 801-502-665.

Additional information will be available on the agency calendar of events at the following link: <https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Sunrise Redi Mix LLC, P.O. Box 1299, Springtown, Texas 76082-1299, or by calling Ms. Ida Rodriguez, Permit Consultant at (972) 670-2841.

Notice Issuance Date: May 5, 2021

TRD-202101775

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 5, 2021



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 164476

APPLICATION. Sunrise Redi Mix LLC, P.O. Box 1299, Springtown, Texas 76082-1299 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 164476 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located on the right side of Blair Road approximately 175 feet east of its intersection with Farm-to-Market Road 156, Northlake, Denton County, Texas 76247. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.149778&lng=-97.288722&zoom=13&type=r>. This application was submitted to the TCEQ on March 25, 2021. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on May 5, 2021.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of

the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Tuesday, June 29, 2021, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 927-098-971. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the hearing for assistance in accessing the hearing and participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (631) 992-3221 and enter access code 448-779-132.

Additional information will be available on the agency calendar of events at the following link: <https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Sunrise Redi Mix LLC, P.O. Box 1299, Springtown, Texas 76082-1299, or by calling Ms. Ida Rodriguez, Permit Consultant at (972) 670-2841.

Notice Issuance Date: May 7, 2021

TRD-202101851

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 11, 2021

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 164790

APPLICATION. Chisholm Trail Redi-Mix, LLC, 1948 County Road 1234, Nemo, Texas 76070-3003 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 164790 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at 3348 Peden Road, Fort Worth, Tarrant County, Texas 76179. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.938575&lng=-97.434408&zoom=13&type=r>. This application was submitted to the TCEQ on April 13, 2021. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on April 28, 2021.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Wednesday, June 30, 2021, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 250-734-475. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the hearing for assistance in accessing the hearing and participating telephonically. Members of the public who wish to only

listen to the hearing may call, toll free, (415) 655-0052 and enter access code 117-464-662.

Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Chisholm Trail Redi-Mix, LLC, 1948 County Road 1234, Nemo, Texas 76070-3003, or by calling Mr. Aaron Hertz, EHS Director at (512) 709-4251.

Amended Notice Issuance Date: May 10, 2021

TRD-202101852

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 11, 2021

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Notice of Hearing on Jacob Rojas: SOAH Docket No. 582-21-2001; TCEQ Docket No. 2021-0368-LIC

APPLICATION.

Jacob Rojas, P.O. Box 37221, San Antonio, Texas 78237, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Backflow Prevention Assembly Tester License. The Executive Director denied Mr. Rojas's application for cause. Mr. Rojas has requested a formal hearing on the Executive Director's decision. During the review of Mr. Rojas's application, the Executive Director discovered that Mr. Rojas received deferred adjudication for a Second-Degree Felony in 2020. The Executive Director denied Mr. Rojas's application because this citation was for an offense that directly relates to the duties and responsibilities of the licensed occupation.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - June 15, 2021

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 160 467 2081

Password: 9Z&q62

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 160 467 2081

Password: 097053

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Rojas should be issued a Backflow Prevention Assembly Tester License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Jacob Rojas fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. General information about SOAH can be found on its website at www.soah.texas.gov/index.asp, or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: May 5, 2021

TRD-202101776

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 5, 2021



Notice of Hearing on Jacob Rojas: SOAH Docket No. 582-21-2002; TCEQ Docket No. 2021-0369-LIC

APPLICATION.

Jacob Rojas, P.O. Box 37221, San Antonio, Texas 78237, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Groundwater Operator B License. The Executive Director denied Mr. Rojas's application for cause. Mr. Rojas has requested a formal hearing on the Executive Director's decision. During the review of Mr. Rojas's application, the Executive Director discovered that Mr. Rojas received deferred adjudication for a Second-Degree Felony in 2020. The Executive Director denied Mr. Rojas's application because this citation was for an offense that directly relates to the duties and responsibilities of the licensed occupation.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - June 15, 2021

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 160 467 2081

Password: 9Z&q62

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 160 467 2081

Password: 097053

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Rojas should be issued a Groundwater Operator B License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Jacob Rojas fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our website at www.tceq.texas.gov. General information about SOAH can be found on its website at www.soah.texas.gov/index.asp, or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: May 5, 2021

TRD-202101777

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 5, 2021



Notice of Public Meeting for TPDES Permit for Municipal Wastewater: New Permit No. WQ0015916001

APPLICATION AND PRELIMINARY DECISION. Aubrey Plant LP, 2727 Routh Street, Dallas, Texas 75201, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015916001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day.

The facility will be located approximately 0.71 mile west of the intersection of Farm-to-Market Road 428 and Farm-to-Market Road 2931, in Denton County, Texas 76258. The treated effluent will be discharged to an unnamed tributary, thence to Pecan Creek, thence to Lewisville Lake in Segment No. 0823 of the Trinity River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tribu-

tary and high aquatic life use for Pecan Creek. The designated uses for Segment No. 0823 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (IP), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected to Pecan Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.949166%2C33.300277&level=12>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because of a legislator request.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, June 24, 2021 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 814-068-915. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and

participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (562) 247-8422 and enter access code 603-413-742. Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Aubrey Area Library, 226 Countryside Drive, Aubrey, Texas. Further information may also be obtained from Aubrey Plant LP at the address stated above or by calling Mr. Nathan Thompson, P.E., Principal, Peloton Land Solutions Inc., at (214) 577-5223.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: May 11, 2021

TRD-202101853

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 11, 2021



**Notice of Receipt of Application and Intent to Obtain
Municipal Solid Waste Permit Amendment: Proposed Permit
No. 1404B**

Application. The City of Menard, P.O. Box 145, Menard, Menard County, Texas 76859, a Type IV Arid Exempt Municipal Solid Waste Disposal Facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize a 5 acre expansion of the facility. The facility is located 2.2 miles west of the City of Menard along highway 190 in Menard County, Texas. The TCEQ received this application on March 30, 2021. The permit application is available for viewing and copying at the Menard City Hall, 108 W. San Saba Ave., Menard, Menard County, Texas 76859. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1XnvXH>. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments. Public Comment/Public Meeting. You may submit public comments or request a public meeting on

this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court. To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period. Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below. Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk,

MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from the City of Menard at the address stated above or by calling Mr. Don Kerns, City Manager at (325) 396-4706.

TRD-202101774

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 5, 2021



Texas Ethics Commission

List of Late Filers

May 6, 2021

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Scarlett Scalzo at (512) 463-5800.

Deadline: Semiannual Report due January 15, 2019

Martina Salinas, 5408 Black Oak Ln., River Oaks, Texas 76114

Deadline: Semiannual Report due July 15, 2019

Martina Salinas, 5408 Black Oak Ln., River Oaks, Texas 76114

Deadline: Semiannual Report due July 15, 2020

Natasha Demming Ruiz, 8834 Woodlyn, Houston, Texas 77078

Michelle D. Hammel, 6340 N. Eldridge Pkwy. Ste. N107, Houston, Texas 77041

Deadline: Semiannual Report due January 15, 2021

Wan-Yu Elisa Chan, 613 Contadora, San Antonio, Texas 78258

Nicole D. Collier, P.O. Box 24241, Fort Worth, Texas 76124

Rolando Gutierrez, P.O. Box 15232, San Antonio, Texas 78212

Michael Krusee, 13231 Briar Hollow, Austin, Texas 78729-3655

Lela D. Mays, 288 Ashwood Lane, Sunnyvale, Texas 75182

Shannon K. McClendon, 1302 Overland Stage Rd., Ste. 200, Dripping Springs, Texas 78620

Steve Riddell, 1308 Shady Creek Drive, Euless, Texas 76040

Dexter E. Smith, 1029 Walnut Pointe, League City, Texas 77573

Barbara Jean Stalder, 5205 Broadway #501, Pearland, Texas 77581

TRD-202101834

Anne Peters

Executive Director

Texas Ethics Commission

Filed: May 10, 2021



Texas Health and Human Services Commission

Public Notice: Preadmission Screening and Resident Review Habilitative Specialized Services

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 21-0011 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to expand the community-based provider agency options for Medicaid recipients who have been found through the Preadmission Screening and Resident Review (PASRR) process to need specialized add-on services. The community-based provider agency can be a local intellectual and developmental disability authority, or must be licensed or certified by HHSC to provide program services for a specified waiver program. Additional edits were made to behavioral support and day habilitation services regarding setting locations. Behavioral support provider qualifications were also updated for consistency with current Texas state law. The proposed amendment is effective September 01, 2021.

The proposed amendment is estimated to result in an annual fiscal expenditure of \$209,492 for the remainder of federal fiscal year 2021, consisting of \$2,261,622 in federal funds and an annual savings of \$2,052,130 in state general revenue. For federal fiscal year 2022, the estimated fiscal expenditure is \$418,983, consisting of \$4,186,806 in federal funds and an annual savings of \$3,767,823 in state general revenue. For federal fiscal year 2023, the estimated fiscal expenditure is \$418,983, consisting of \$4,043,717 in federal funds and an annual savings of \$3,624,734 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Holly Freed, State Plan Team Lead, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-202101856

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: May 12, 2021



Texas Historical Commission

Correction of Error

The Texas Historical Commission (Commission) proposed amendments to 13 TAC §21.12 in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1159). Due to an error by the Texas Register, subsection (f) was published incorrectly. The text should read as follows:

(f) During the period previously referred to in subsection (e), Commission [of this section, ~~marker~~] staff may choose to refer the request to a panel of professional historians for a recommendation.

TRD-202101838



Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Health IQ Insurance Company, a domestic life, health, and/or accident company. The home office is in Plano, Texas.

Application for American Century Life Insurance Company of Texas, a domestic life, health and/or accident company, to change its name to American Century Life Insurance Company. The home office is in Allen, Texas.

Application for Memorial Hermann Health Care Collaborative, LLC, a domestic Health Care Collaborative (HCC), DBA Unity Health Partners. The home office is in Houston, 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-202101857
James Person
General Counsel
Texas Department of Insurance
Filed: May 12, 2021



Texas Windstorm Insurance Association--Endorsement Filings

Reference Nos. P-0521-07, P-0521-08, P-0521-09, and P-0521-10

SERFF State Tracking Nos. S691551, S691552, S691563, and S691564

In accordance with 28 TAC §5.4911, the Texas Windstorm Insurance Association (TWIA) has filed new endorsement forms with the Texas Department of Insurance for approval:

-- Endorsement No. 311 - Extension of Coverage - Additional Living Expense;

-- Endorsement No. 321 - Extension of Coverage - Wind-Driven Rain;

-- Endorsement No. 331 - Extension of Coverage - Consequential Loss; and

-- Endorsement No. 810 - Specified Building or Structure Exclusion Endorsement.

TWIA asserts these endorsements will not change current coverage, but they will reorganize how coverage is described in the policy.

Endorsement Nos. 311, 321, and 331 will replace three existing endorsements (Nos. 310, 320, and 330) that provide various combinations of indirect loss coverage. The new endorsements split out and reorganize provisions from the existing endorsements. TWIA expects the new endorsements will reduce potential confusion.

Endorsement No. 810 will list structures that are excluded from a particular dwelling policy. TWIA currently lists excluded structures on the declarations page. TWIA expects that the new endorsement, which requires the policyholder's signature, will increase the visibility of excluded structures.

You can get a copy of the filings from the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030 or online at www.tdi.texas.gov/submissions/indextwia.html#form.

Public Comment: Send comments on the filings to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030 by 5:00 p.m., Central time, on June 21, 2021.

Hearing Requests: To request a public hearing, you must submit a request separately by 5:00 p.m., Central time, on June 10, 2021. Send the request for a hearing by email to ChiefClerk@tdi.texas.gov or by

mail to the Texas Department of Insurance, Office of the Chief Clerk, MC-GC-CCO, P.O. Box 12030, Austin, Texas 78711-2030.

TRD-202101801
James Person
General Counsel
Texas Department of Insurance
Filed: May 7, 2021



North Central Texas Council of Governments

Request for Proposals for Freight Vehicle Intersection Optimization Services

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms (Vendors) to develop, implement, and provide management services for a solution that optimizes the movement of freight vehicles through intersections in the Dallas-Fort Worth region (DFW) by reducing the number of stops at traffic lights by freight vehicles (hereinafter "freight optimization solution" or FOS). The selected firm (Consultant) will be tasked with working with local governments and the freight industry to implement the freight optimization solution and then be responsible for maintaining the FOS, providing regular reporting on FOS operation, and working with industry and local jurisdictions to optimize the FOS and maximize benefits to the region.

Proposals must be received no later than 5:00 p.m., Central Time, on Friday, July 23, 2021, to Clint Hail, Transportation Planner III, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, May 21, 2021.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202101859
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: May 12, 2021



Workforce Solutions Deep East Texas

Request for Proposals #21-402.2 Re-Issue

LEASE SPACE FOR WORKFORCE SOLUTIONS CENTER IN CENTER, TEXAS

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas (Board) is requesting proposals to lease office space consisting of approximately 3,200 - 4,000 square feet. The space must be located within the city limits of Center, Texas, and easily accessible to the public. All space offered must meet, be built to meet, or be renovated to meet the Board's specifications.

A copy of the RFP #21-402.2 is available on the Board's website at www.detwork.org.

RFP Issue Date: May 11, 2021

End of Question Period: May 25, 2021 4:00 p.m. (CST)

Proposal Due Date and Time: June 3, 2021 4:00 p.m. (CST)

Proposals will ONLY be accepted by hand or email and must be submitted to kmoulder@detwork.org or address below. Proposals submitted via private or public mail carrier or fax will not be accepted.

Requests for copies of the RFP and questions regarding the RFP can be made to:

Kim Moulder, Accounting Tech II
Workforce Solutions Deep East Texas

415 South First Street, Suite 110B
Lufkin, Texas 75901

Phone: (936) 639-8898, Fax: (936) 633-7491

Email: kmoulder@detwork.org

Workforce Solutions Deep East Texas is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. For hearing impaired (800) 735-2988 English (voice) / (800) 662-4954 Spanish (voice) / (800) 735-2989 or 711 (TDD).

TRD-202101835
Mark Durand
Executive Director
Workforce Solutions Deep East Texas
Filed: May 10, 2021



Workforce Solutions for the Heart of Texas

Request for Proposal #13210101 Workforce Solutions for the Heart of Texas Workforce Innovation and Opportunities Act (WIOA) Youth Services

(RFP #13210101)

The Heart of Texas Workforce Development Board, Inc. (dba) Workforce Solutions for the Heart of Texas is soliciting proposals for Workforce Innovation and Opportunity Act (WIOA) Youth Services. Workforce Solutions for the Heart of Texas is the administrative entity for programs funded by the Texas Workforce Commission and the Department of Labor and serves the counties of Bosque, Falls, Freestone, Hill, Limestone, and McLennan.

The initial contract period will begin on July 1, 2021. Eligible service providers must have extensive knowledge and experience including a successful track record in youth workforce development programs, state and federal laws and statutes.

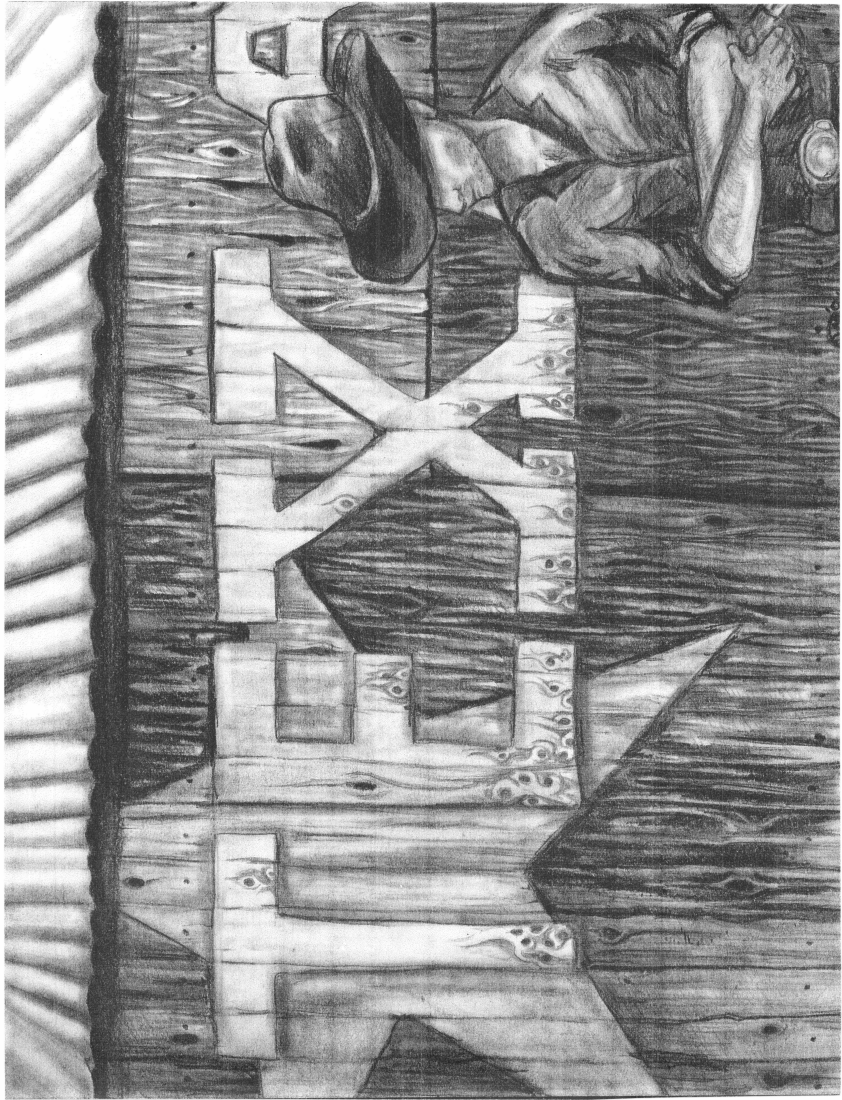
The Request for Proposal (RFP) may be obtained by contacting Margie Cintron at (254) 855-6543 or by e-mail at jcintron@grandecom.net. The RFP is also available on the Workforce Solutions for the Heart of Texas website at www.hotworkforce.com.

Proposals are due no later than 4:00 p.m. (CST) Thursday, June 3, 2021, via mail, hand-delivery or courier delivery to: Workforce Solutions for the Heart of Texas, Attn: Margie Cintron, 801 Washington Avenue, Suite 700 Waco, Texas 76701.

The Heart of Texas Workforce Board, Inc. is an equal opportunity employer/programs and auxiliary aids, and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas service at 711 or (TDD) 1-800-735-2989 / 1-800-735-2988 (voice).

TRD-202101837
Anthony Billings
Executive Director
Workforce Solutions for the Heart of Texas
Filed: May 10, 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

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