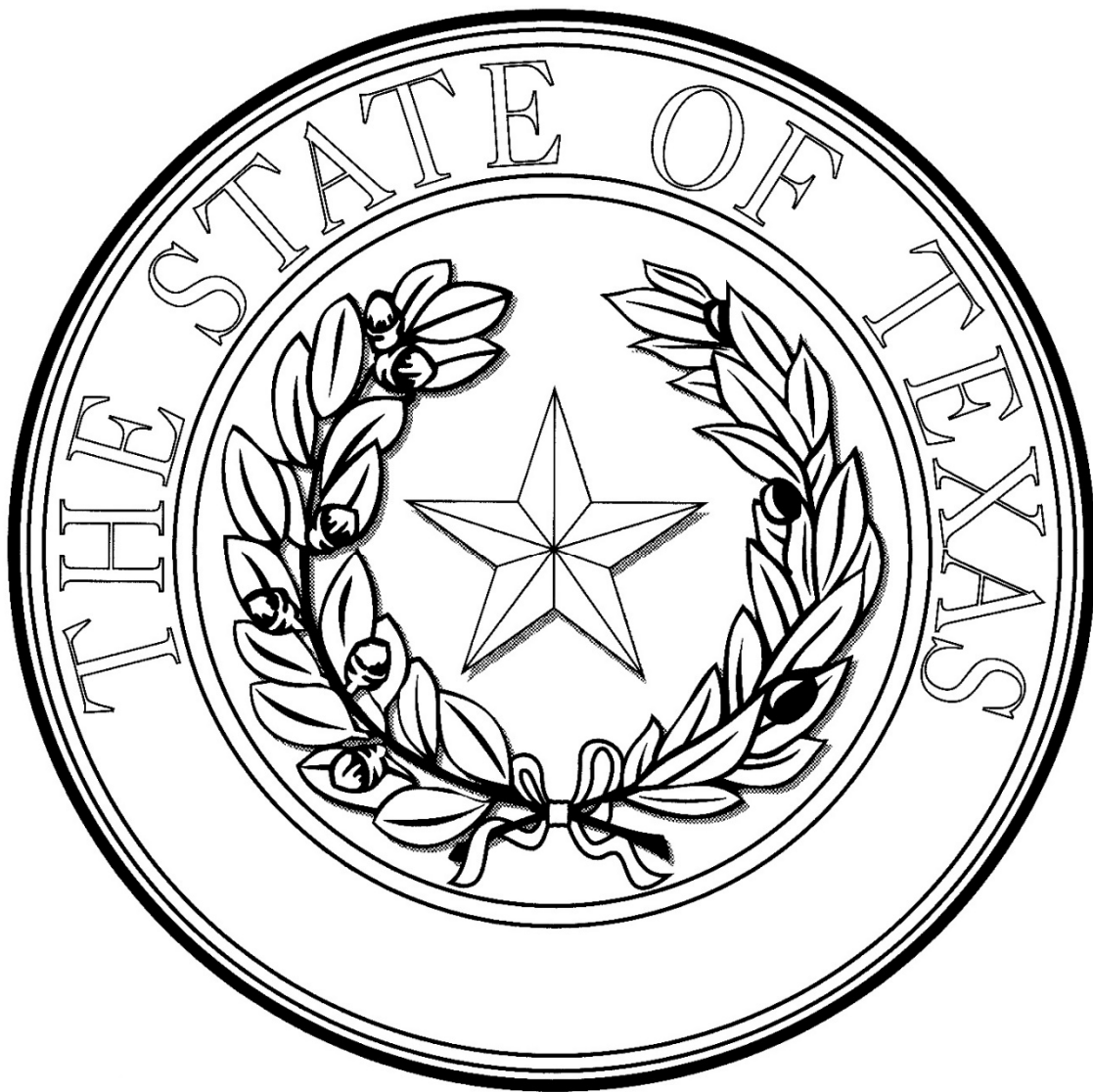

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THE GOVERNOR

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.

Executive Order GA-36

Relating to the prohibition of governmental entities and officials from mandating face coverings or restricting activities in response to the COVID-19 disaster.

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

WHEREAS, I issued Executive Order GA-34 on March 2, 2021, to open Texas 100 percent and remove face-covering requirements; and

WHEREAS, since then, COVID-19 hospitalizations and the rate of new COVID-19 cases have continued their steady decline; and

WHEREAS, Executive Order GA-34 specifically provides that "no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering," and, notwithstanding that order, some local governmental entities have caused confusion by nonetheless purporting to require face coverings; and

WHEREAS, Executive Order GA-34 also provides that "there are no COVID-19-related operating limits for any business or other establishment," that any "conflicting order issued by local officials in response to the COVID-19 disaster" is superseded, and that all relevant statutes are suspended to the extent necessary to preclude inconsistent local orders; and

WHEREAS, to further ensure statewide uniformity, and based on the continued improvement of conditions in Texas, revised standards are appropriate to achieve the least restrictive means of combatting COVID-19; and

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

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

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;" and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;" and

WHEREAS, under Section 418.173, the legislature authorized as "an offense," punishable by a fine up to \$1,000, any "failure to comply with the [state emergency management plan] or with a rule, order, or ordinance adopted under the plan;"

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

1. No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering: *provided, however, that:*

a. state supported living centers, government-owned hospitals, and government-operated hospitals may continue to use appropriate policies regarding the wearing of face coverings; and

b. the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails acting consistent with guidance by the Texas Commission on Jail Standards may continue to use appropriate policies regarding the wearing of face coverings.

2. Notwithstanding the above, public schools may continue to follow policies regarding the wearing of face coverings to the extent reflected in current guidance by the Texas Education Agency, until June 4, 2021. The Texas Education Agency shall revise its guidance such that, effective 11:59 p.m. on June 4, 2021, no student, teacher, parent, or other staff member or visitor may be required to wear a face covering.

3. This executive order shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in paragraph numbers 1-2. To the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements, I hereby suspend the following:

a. Sections 418.1015(b) and 418.108 of the Texas Government Code;

b. Chapter 81, Subchapter E of the Texas Health and Safety Code;

c. Chapters 121, 122, and 341 of the Texas Health and Safety Code;

d. Chapter 54 of the Texas Local Government Code; and

e. any other statute invoked by any local governmental entity or official in support of a face-covering requirement.

Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any such face-covering requirement by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000, beginning at 11:59 p.m. on May 21, 2021.

4. Under Executive Order GA-34, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials, in all counties not in an area of high hospitalizations as defined in that executive order. Executive Order GA-34 also superseded any conflicting local order in response to the COVID-19 disaster, and directed that all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a

local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000, beginning at 11:59 p.m. on May 21, 2021.

This executive order supersedes subparagraph numbers 1(b) and 2(c)(iii) of Executive Order GA-34, but does not otherwise supersede Executive Orders GA-10, GA-13, GA-34, or GA-35. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.

Given under my hand this the 18th day of May, 2021.

Greg Abbott, Governor
TRD-202101988



Proclamation 41-3818

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the death of the Honorable Ron Wright has created a vacancy in the U.S. House of Representatives for the 6th Congressional District of Texas, which consists of all or parts of Ellis, Navarro, and Tarrant counties; and

WHEREAS, a special election to fill the vacancy in Congressional District 6 was held on Saturday, May 1, 2021, and the results of that special election have been officially declared; and

WHEREAS, no candidate in the special election received a majority of the votes cast, as required by Sections 203.003 and 204.021 of the Texas Election Code; and

WHEREAS, Section 2.021 of the Texas Election Code requires that a runoff election be held if no candidate receives the votes necessary to be elected ; and

WHEREAS , Section 2.025(d) of the Texas Election Code provides that the runoff election for a special election to fill a vacancy in Congress must be held not earlier than the 70th day or later than the 77th day after the date the final canvass of the main election is completed; and

WHEREAS, Section 3.003(a)(3) of the Texas Election Code requires a special runoff election to be ordered by proclamation of the governor;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and statutes of the State of Texas, do hereby order a special runoff election to be held in Congressional District 6 on Tuesday, July 27, 2021, for the purpose of electing a U.S. Representative for Congressional District 6 to serve out the unexpired term of the Honorable Ron Wright.

Early voting by personal appearance shall begin on Monday, July 19, 2021, and end on Friday, July 23, 2021, in accordance with Sections 85.001(b), 85.001(c), and 204.021 of the Texas Election Code.

A copy of this order shall be mailed immediately to the County Judges of all counties contained within Congressional District 6, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said election may be held to fill the vacancy in Congressional District 6 and its result proclaimed in accordance with law.

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 12th day of May, 2021.

Greg Abbott, Governor
TRD-202101883



Proclamation 41-3819

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on February 12, 2021, certifying under 418.014 of the Texas Government Code that the severe winter weather poses an imminent threat of widespread and severe property damage, injury, and loss of life due to prolonged freezing temperatures, heavy snow, and freezing rain statewide; and

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

WHEREAS, a state of disaster continues to exist in all counties due to the widespread and severe damage caused by the severe winter weather;

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 254 counties in Texas.

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 13th day of May, 2021.

Greg Abbott, Governor
TRD-202101938



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-0407-KP

Requestor:

Mr. Tony Simms
Chambers County Auditor
Post Office Box 910
Anahuac, Texas 77514

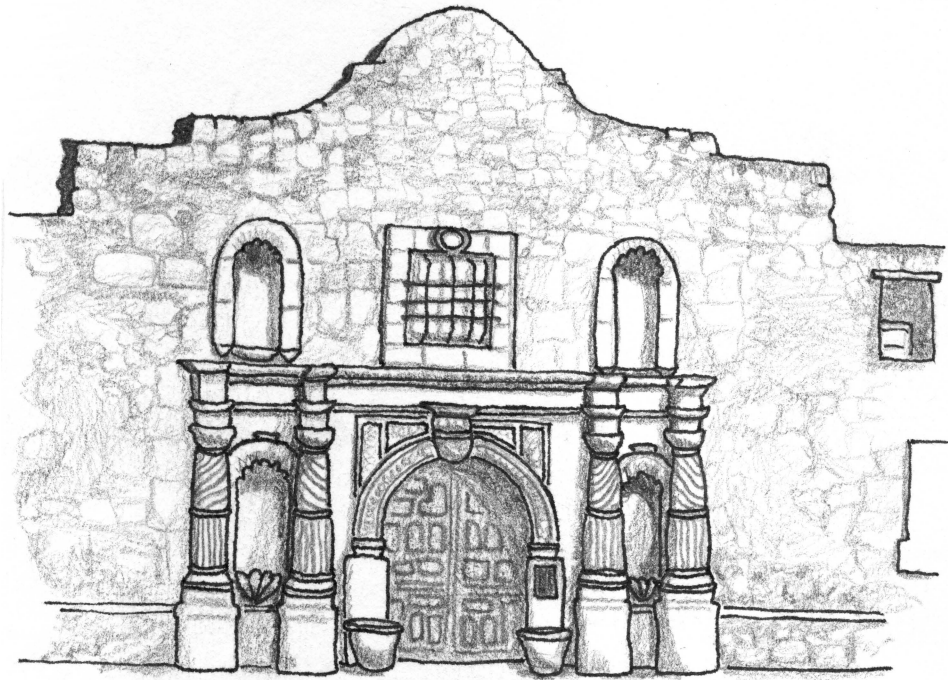
Re: Authority of a conservation district to change the directors' terms of office from two to four years (RQ-0407-KP)

Briefs requested by June 10, 2021

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

TRD-202101968
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 18, 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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §60.22

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter B, §60.22, General Powers and Duties of the Department and the Executive Director, regarding the issuance of emergency licenses by the Texas Department of Licensing and Regulation (Department). The effective date for this emergency rule is May 22, 2021.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 60, Procedural Rules of the Commission and the Department, implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation.

On March 13, 2020, the Governor of Texas issued a disaster proclamation under Texas Government Code §418.014 certifying that COVID-19 poses an imminent threat of disaster for all counties in the State of Texas. This disaster proclamation has been renewed continuously since that date, most recently on April 5, 2021. The Department has implemented safety measures and work from home initiatives to minimize the effects of COVID-19 on agency operations. However, due to the limited availability of staff and several positive tests for COVID-19 among Department staff, delays in Department operations have occurred. These delays continue to impact license processing times, despite significant progress the Department has made in streamlining its functions. The Department is currently operating under an emergency rule permitting the issuance of emergency licenses that will expire on May 21, 2021 and cannot be renewed by the Commission. This new emergency rule is necessary to continue the emergency license process after the expiration of the existing emergency rule. The new rule differs from the expiring rule by providing greater flexibility to the executive director regarding the issuance and expiration dates of emergency licenses and is located in the rule section concerned with the responsibilities of the executive director for greater clarity.

The delays in Department operations present imminent peril to the public health, safety, or welfare requiring adoption of the emergency rule on fewer than 30 days' notice. The Department issues licenses for many different professions that serve

essential roles for the people of Texas. Delays in license renewal may prevent certain license holders from providing essential public health services or construction and repair services necessary for health and safety. Additionally, license holders cannot legally provide services after the expiration of their license, placing these individuals in the precarious position of violating the law to continue employment during the COVID-19 pandemic. The emergency rule addresses these issues by permitting the Department's executive director to issue emergency licenses under Chapter 51 of the Occupations Code.

SECTION-BY-SECTION SUMMARY

The emergency rule amends §60.22 by creating new subsection (e) to permit the executive director to issue emergency licenses under Texas Occupations Code §51.408 due to the state of disaster declaration issued by the governor. The emergency rule also permits the executive director to implement policies as necessary to administer this subsection and clarifies that the holder of an emergency license is not required to post or display the emergency license.

COMMISSION ACTION

At its meeting on May 6, 2021, the Commission adopted the emergency rule without changes as recommended by the Department.

FUTURE RULEMAKING

Under Texas Government Code §2001.034, the emergency rule may be effective for 120 days, and may be renewed once for an additional 60 days. The Department intends to propose this or a similar rule under the normal rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted section.

STATUTORY AUTHORITY

The emergency rule is adopted with abbreviated or no notice and with an expedited effective date under Texas Government Code §2001.034(a) and §2001.036(a)(2).

The emergency rule is adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter.

The statutory provisions affected by the emergency rule are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the emergency rule.

§60.22. General Powers and Duties of the Department and the Executive Director.

(a) The Executive Director shall have primary responsibility to manage the operations and administration of the Department as provided by Texas Occupations Code Chapter 51 and other applicable law, including but not limited to:

- (1) issuing licenses;
- (2) resolving complaints;
- (3) conducting investigations and inspections;
- (4) imposing agreed order sanctions and administrative penalties; and
- (5) administering exams.

(b) The Executive Director may approve agreed orders in contested cases and shall have authority to issue other orders as provided by law or as delegated by the Commission.

(c) The Executive Director may propose rules for publication in the *Texas Register* as delegated by the Commission.

(d) The Executive Director may implement any emergency orders or proclamations issued by the Governor to suspend or amend existing statutes and rules. The Executive Director will notify the Commission of the Department's actions to comply with the Governor's emergency orders or proclamations.

(e) For any license that expires during a state of disaster or the following recovery period declared by the governor under Texas Government Code, Chapter 418, the Executive Director may issue to the license holder in a designated disaster area an emergency license under Texas Occupations Code §51.408. The Executive Director may implement policies as necessary to administer this subsection. The holder of an emergency license issued under this subsection is not required to post or display the emergency license.

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

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TRD-202101962

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

SUBCHAPTER Z. EMERGENCY RULEMAKING

26 TAC §306.1351

The Health and Human Services Commission is renewing the effectiveness of emergency new §306.1351 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 13, 2021.

TRD-202101878

Nycia Deal

Attorney

Health and Human Services Commission

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Expiration date: July 17, 2021

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CHAPTER 556. NURSE AIDES

26 TAC §556.100

The Executive Commissioner of Health and Human Services (HHSC) adopts on an emergency basis in Title 26, Part 1, Chapter 556 Nurse Aides, new §556.100, concerning an emergency rule in response to COVID-19 describing the process for individuals who have been trained as nurse aides and have been completing nurse aide tasks under a waiver to become certified as nurse aides. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for no longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect residents living in a nursing facility and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to permit individuals with work experience gained at a nursing facility during the pandemic to be counted as classroom and clinical training hours required as part of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

Because of the COVID-19 pandemic, the Centers for Medicare and Medicaid Services (CMS) waived federal requirements that nursing facilities not employ anyone for longer than four months unless the person meets the training and certification requirements under 42 Code of Federal Regulations (CFR) §483.35(d). The Office of the Governor approved a corresponding suspension of state regulations. On April 9, 2020, HHSC issued a provider letter (PL 20-26) related to the governor's suspension of provisions prohibiting a nursing facility from hiring a non-certified nurse aide to complete nurse aide tasks for longer than four months. The suspension was intended to provide flexibility in staffing during the pandemic and did not suspend the requirements for supervision, competency, employee misconduct registry verification, or criminal background checks (Texas Health and Safety Code Chapter 250).

Pursuant to these flexibilities, facilities have employed and trained numerous staff to complete nurse aide tasks who are

not certified nurse aides. Once these flexibilities are no longer available the staff completing these tasks will no longer be able to perform them, unless the staff have become certified as nurse aides. To ensure continued staffing at nursing facilities, a transition plan needs to be in place.

The individuals at issue have been trained as nurse aides and have been completing nurse aide tasks under the current flexibilities. To provide individuals with credit for this experience, the emergency rule will allow time trained and time worked at a nursing facility during the pandemic (work training and experience) to be counted as classroom and clinical training hours required as part of a NATCEP.

Under current regulations, the training provided by a NATCEP must be associated with a nursing facility that meets the requirements of 42 CFR §483.151(b)(2) - (3). This requirement is included in 26 TAC §556.3(e). State regulations provide a waiver for this under certain circumstances, but only for nursing facilities prohibited from providing a NATCEP, when another NATCEP is not available within a reasonable distance from the facility employing the individual. In the current pandemic, no nursing facility is a "reasonable" distance from another, considering the risk of exposure to COVID-19 posed to facility residents by non-employees or by non-essential visitors of their facility.

To provide a path for certification of temporary nurse aides who have been working in nursing facilities under a waiver of training requirements during the COVID-19 pandemic, HHSC is adopting a new emergency rule to allow time trained and time worked in a nursing facility during the pandemic to be counted as classroom and clinical hours required as part of a NATCEP. The purpose of the new rule is to describe the requirements related to certification as a nurse aide based on this work during the pandemic.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §250.0035 and §242.037. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §250.0035 requires the Executive Commissioner of HHSC to make and enforce rules prescribing minimum training requirements to be listed on the nurse aid registry. Texas Health and Safety Code §242.037 requires the Executive Commissioner of HHSC to enforce rules and minimum standards to implement Chapter 242 of the Health and Safety Code.

The new section implements Texas Government Code §531.0055 and §531.021 and Texas Health and Safety Code §250.0035.

§556.100. Nurse Aide Transition from Temporary Status.

(a) An individual who has accumulated hours of work training and work experience in a nursing facility during the determination that a public health emergency exists due to COVID-19 issued by the United States Secretary of Health and Human Services is allowed to count such hours worked under a qualified instructor (work training and experience) towards classroom and clinical training hours required as part of a Nurse Aide Training and Competency Evaluation Program (NATCEP). Due to the current public health emergency where the con-

tainment of the spread of the COVID-19 virus is necessary, work training and experience will be accepted for this purpose from all nursing facilities regardless of the facilities' eligibility to provide or their establishment of a NATCEP.

(b) The work training and experience described in subsection (a) of this section must include the minimum requirements in §556.3(j) of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(c) The instructor for the work training and experience described in subsection (a) of this section must meet the requirements in §556.5(b) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(d) For an individual with work training and experience described in subsection (a) of this section to count work training and experience hours as classroom and clinical training hours, the facility where the work training and experience was performed must complete a form provided by HHSC. The facility must document the following on the form:

(1) the name of the nurse instructor responsible for training and supervising the individual and an attestation that meets the requirements in §556.5(b) of this chapter;

(2) a list of the training requirements with an attestation that the individual was trained in each;

(3) an attestation that the duration of the work training and experience is at least 100 hours; and

(4) the signature of the nurse instructor.

(e) A facility without a NATCEP that seeks to have an employed individual certified as a nurse aide must work with an approved NATCEP to complete the criminal background check and approve the individual for the nurse aide certification examinations.

(f) Each nurse aide candidate must successfully complete both the written or oral examination and the skills demonstration required by §556.6(g) of this chapter (relating to Competency Evaluation Requirements), to be certified and placed on the nurse aide registry.

(g) To be considered in lieu of formal training, an individual's work training and experience must be completed during the duration of the declared COVID-19 public health emergency.

(h) Under the provisions of this section, a nurse aide must be certified within four months following the end of the COVID-19 public health emergency determination issued by the United States Secretary of Health and Human Services.

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 19, 2021.

TRD-202102019

Karen Ray

Chief Counsel

Health and Human Services Commission

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Expiration date: September 15, 2021

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING
AND DISABILITY SERVICES

CHAPTER 30. MEDICAID HOSPICE
PROGRAM

SUBCHAPTER B. ELIGIBILITY
REQUIREMENTS

40 TAC §30.14

The Department of Aging and Disability Services is renewing the effectiveness of emergency amended §30.14 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 675).

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Department of Aging and Disability Services

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For further information, please call: (210) 781-0523



PART 20. TEXAS WORKFORCE
COMMISSION

CHAPTER 815. UNEMPLOYMENT
INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §815.4

The Texas Workforce Commission is renewing the effectiveness of emergency new §815.4 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 991).

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TRD-202101926

Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



SUBCHAPTER F. EXTENDED BENEFITS

40 TAC §815.175

The Texas Workforce Commission is renewing the effectiveness of emergency new §815.175 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 993).

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Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



SUBCHAPTER G. CARES ACT PROVISIONS

40 TAC §§815.180 - 815.185

The Texas Workforce Commission is renewing the effectiveness of emergency amended §§815.180 - 815.185 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 994).

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TRD-202101928

Les Trobman

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Texas Workforce Commission

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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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1302, §353.1304

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §353.1302, concerning Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019; and §353.1304, concerning Quality Metrics for the Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019.

BACKGROUND AND PURPOSE

In order to continue incentivizing Texas nursing facilities (NFs) to improve quality and innovation in the provision of services, HHSC is proposing to amend the Quality Incentive Payment Program (QIPP) quality metrics that HHSC may select for each program year as well as certain component funding allocations beginning in program year five (i.e., September 1, 2021 through August 31, 2022).

Section 353.1302 would be amended to adjust QIPP Component 2 and Component 3 funding allocations as follows: increase the allocation percentage from 30 percent to 40 percent in Component 2 (paid monthly); and decrease the allocation percentage from 70 percent to 60 percent in Component 3 (paid quarterly).

The additional proposed amendments would discontinue an unnecessary requirement, provide increased clarity, and ensure that the language in this section corresponds to similar language in other sections of Subchapter O.

Section 353.1304 would be amended to remove set types of quality metrics and related performance requirements for each program year in favor of a public notice and hearing process. This proposed change allows the program to be adapted on an annual basis to ensure quality objectives are continually improved. This amendment would also clarify HHSC's validation requirements for reviews of self-reported data in the program.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §353.1302 and §353.1304 replace all instances of the term "eligibility period" with "program period" to make these rules consistent with other rules regarding directed payment programs. In addition, amendments up-

date "Rate Analysis Department" to the department's new title, "Provider Finance Department."

The proposed amendment to §353.1302(b) adds new paragraph (7) to define the term "runout period" to mean the 23 months following the end of the program period.

The proposed amendment to §353.1302(e) removes paragraph (1) and renumbers the subsection. Clarifying edits are made to new paragraph (1); text added to new paragraph (2) updates the certification requirements associated with a provider's use of QIPP funds; new paragraph (3) clarifies the requirements when a participating provider undergoes a change of ownership impacting eligibility in the program; and new paragraph (4) requires HHSC access to and provider maintenance of eligibility and enrollment records and data.

The proposed amendment to §353.1302(f) clarifies paragraphs (1), (2), and (4).

The proposed amendment to §353.1302(g) makes clarifying edits in paragraph (1) and revises the component funding allocations in paragraphs (2) and (3).

The proposed amendment to §353.1302(h) makes clarifying edits in paragraph (1) and revises subparagraph (F) to provide that no funds will be earned if a NF does not have enough data for any quality metrics to be calculated.

The proposed amendments to §353.1302(i) and §353.1302(j) make clarifying edits and update outdated references.

The proposed amendment to §353.1304(b) makes clarifying edits and removes the examples in paragraphs (1) and (2).

The proposed amendment to §353.1304(c) removes paragraphs (1) - (6) to allow HHSC to designate evidence-based quality metrics for each program period. This change will ensure the program can be adapted on an annual basis to ensure quality objectives are continually improved.

The proposed amendment to §353.1304(d) removes paragraphs (1) - (6) to allow HHSC to specify the performance requirements associated with the designated quality metrics for each program period.

The proposed amendment to §353.1304 creates a new subsection (e) related to quality assurance and the process HHSC will follow to validate provider data and documentation.

The proposed amendment to §353.1304 renumbers current subsections (e) and (f).

Current §353.1304(g) is deleted as any service delivery methodology associated with a quality metric will be provided as part of the public notice and hearing process.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) HHSC has insufficient information to determine the proposed rules' effect on the state's economy.

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

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Participation in the program described in the proposed rules is optional.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public benefit will be continued incentivizing of NFs to improve quality and innovation in the provision of NF services.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. Participation in the QIPP program is voluntary.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, or by email to QIPP@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rules 21R069" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with board rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under the Texas Human Resources Code, Chapter 32; and by Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

The amendments affect Texas Human Resources Code, Chapter 32; Texas Government Code, Chapter 531; and Texas Government Code Chapter 533. No other statutes, articles, or codes are affected by the amendments.

§353.1302. *Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019.*

(a) (No change.)

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this and other sections of this subchapter may be defined in §353.1301 (relating to General Provisions) or §353.1304 (relating to Quality Metrics for the Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019) of this subchapter.

(1) CHOW application--An application filed with HHSC for a NF change of ownership (CHOW).

(2) Program [Eligibility] period--A period of time for which an eligible and enrolled NF may receive the QIPP amounts described in this section. Each QIPP program [eligibility] period is equal to a state fiscal year (FY) beginning September 1 and ending August 31 of the following year.

(3) Network nursing facility--A NF located in the state of Texas that has a contract with a Managed Care Organization (MCO) [an MCO] for the delivery of Medicaid covered benefits to the MCO's enrollees.

(4) Non-state government-owned NF--A network nursing facility where a non-state governmental entity located in the state of Texas holds the license and is a party to the NF's Medicaid provider enrollment agreement with the state.

(5) Private NF--A network nursing facility not owned by a governmental entity located in the state of Texas, and holds a license.

(6) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform as defined and established under Chapter 354, Subchapter D, of

this title (relating to Texas Healthcare Transformation and Quality Improvement Program).

(7) Runout Period--A period of 23 months following the end of the program period during which the MCO may make adjustments to the MCO member months.

(c) Eligibility for participation in QIPP. A NF is eligible to participate in QIPP if it complies with the requirements described in this subsection.

(1) The NF is a non-state government-owned NF.

(A) The non-state governmental entity that owns the NF must certify the following facts on a form prescribed by HHSC.

(i) That it is a non-state government-owned NF where a non-state governmental entity holds the license and is party to the facility's Medicaid contract; and

(ii) That all funds transferred to HHSC via an inter-governmental transfer (IGT) for use as the state share of payments are public funds.

(B) The NF must be located in the state of Texas in the same RHP as, or within 150 miles of, the non-state governmental entity taking ownership of the facility, be owned by the non-state governmental entity for no less than four years prior to the first day of the program [eligibility] period, or must be able to certify in connection with the enrollment application that they can demonstrate an active partnership between the NF and the non-state governmental entity that owns the NF. The following criteria demonstrate an active partnership between the NF and the non-state governmental entity that owns the NF.

(i) Monthly meetings (in-person or virtual) with NF administrative staff to review the NF's clinical and quality operations and identify areas for improvement. Meetings should include patient observations; regulatory findings; review of CASPER reports, quality measures, grievances, staffing, risk, incidents, accidents, and infection control measures; root cause analysis, if applicable; and design of performance improvement plans.

(ii) Quarterly joint trainings on topics and trends in nursing home care best practices or on needed areas of improvement.

(iii) Annual, on-site inspections of the NF by a non-state governmental entity-sponsored Quality Assurance team.

(2) The NF is a private NF. The NF must have a percentage of Medicaid NF days of service that is greater than or equal to 65 percent. For each private NF, the percentage of Medicaid NF days is calculated by summing the NF's Medicaid NF fee-for-service and managed care days of service, including dual-eligible demonstration days of service, and dividing that sum by the facility's total days of service in all licensed beds. Medicaid hospice days of service are included in the denominator but excluded from the numerator.

(A) The days of service will be annualized based on the NF's latest cost report or accountability report but from a year in which HHSC required the submission of cost reports.

(B) HHSC will exclude any calendar days that the NF was closed due to a natural or man-made disaster. In such cases, HHSC will annualize the days of service based on calendar days when the NF was open.

(d) Data sources for historical units of service. Historical units of service are used to determine an individual private NF's QIPP eligibility status and the distribution of QIPP funds across eligible and enrolled NFs.

(1) All data sources referred to in this subsection are subject to validation using HHSC auditing processes or procedures as described under §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports).

(2) Data sources for the determination of each private NF's QIPP eligibility status are listed in priority order below. For each program [eligibility] period, the data source must be from a cost-reporting year and must align with the NF's fiscal year.

(A) The most recently available Medicaid NF cost report for the private NF. If no Medicaid NF cost report is available, the data source in subparagraph (B) of this paragraph must be used.

(B) The most recently available Medicaid Direct Care Staff Rate Staffing and Compensation Report for the private NF. If no Medicaid Direct Care Staff Rate Staffing and Compensation Report is available, the data source in subparagraph (C) of this paragraph must be used.

(C) The most recently available Medicaid NF cost report for a prior owner of the private NF. If no Medicaid NF cost report for a prior owner of the private NF is available, the data source in subparagraph (D) of this paragraph must be used.

(D) The most recently available Medicaid Direct Care Staff Rate Staffing and Compensation Report for a prior owner of the private NF. If no Medicaid Direct Care Staff Rate Staffing and Compensation Report for a prior owner of the private NF is available, the private NF is not eligible for participation in QIPP.

(3) Data sources for determination of distribution of QIPP funds across eligible and enrolled NFs are listed in priority order below. For each program [eligibility] period, the data source must be from a cost-reporting year and must align with the NF's fiscal year.

(A) The most recently available Medicaid NF cost report for the NF. If the cost report covers less than a full year, reported values are annualized to represent a full year. If no Medicaid NF cost report is available, the data source in subparagraph (B) of this paragraph must be used.

(B) The most recently available Medicaid Direct Care Staff Rate Staffing and Compensation Report for the NF. If the Staffing and Compensation Report covers less than a full year, reported values are annualized to represent a full year. If no Staffing and Compensation Report is available, the data source in subparagraph (C) of this paragraph must be used.

(C) The most recently available Medicaid NF cost report for a prior owner of the NF. If the cost report covers less than a full year, reported values are annualized to represent a full year. If no Medicaid NF cost report for a prior owner of the NF is available, the data source in subparagraph (D) of this paragraph must be used.

(D) The most recently available Medicaid Direct Care Staff Rate Staffing and Compensation Report for a prior owner of the NF. If the Staffing and Compensation Report covers less than a full year, reported values are annualized to represent a full year.

(e) Participation requirements. As a condition of participation, all NFs participating in QIPP must do [allow for] the following.

~~(1)~~ HHSC must be able to access data for the NF from one of the data sources listed in subsection (4) of this section.]

(1) ~~(2)~~ The NF must submit a properly completed enrollment application, on a form prescribed by HHSC, by the due date determined by HHSC. The enrollment period must be no less than 30 calendar days, and the final date of the enrollment period will be at least nine days prior to the IGT notification.

(2) [(3)] The entity that owns the NF must certify, on a form prescribed by HHSC, that no part of any payment made under the QIPP will be used to pay a contingent fee; and that the entity's agreement with the nursing facility does not use a reimbursement methodology containing any type of incentive, direct or indirect, for inappropriately inflating, in any way, claims billed to Medicaid, including [; consulting fee, or legal fee associated with] the NF's receipt of QIPP funds. The [and the] certification must be received by HHSC with the enrollment application described in paragraph (1) [(2)] of this subsection.

(3) [(4)] If a provider has changed ownership in the past five years in a way that impacts eligibility for the program, the provider [The entity that owns the NF] must submit to HHSC, upon demand, copies of contracts it has with third parties with respect to the transfer of ownership or the management of the provider, and which reference the administration of, or payment from, this program [that reference the administration of, or payments from, QIPP].

(4) The NF must ensure that HHSC has access to the NF records referenced in subsection (c) of this section and the data for the NF from one of the data sources listed in subsection (d) of this section. Participating facilities must ensure that these records and data are accurate and sufficiently detailed to support legal, financial, and statistical information used to determine a NF's eligibility during the program period.

(A) The NF must maintain these records and data through the program period and until at least 90 days following the conclusion of the runout period.

(B) The NF will have 14 business days from the date of a request from HHSC to submit to HHSC the records and data.

(C) Failure to provide the records and data could result in adjustments pursuant to §353.1301(k) of this subchapter.

(f) Non-federal share of QIPP payments. The non-federal share of all QIPP payments is funded through IGTs from sponsoring non-state governmental entities. No state general revenue is available to support QIPP.

(1) HHSC will share suggested IGT responsibilities for the program [eligibility] period with all QIPP eligible and enrolled non-state government-owned NFs at least 15 days prior to the IGT declaration of intent deadline. Suggested IGT responsibilities will be based on the maximum dollars [to be] available under the QIPP program, plus eight percent, for the program [eligibility] period as determined by HHSC [; plus eight percent]; forecast STAR+PLUS NF member months for the program [eligibility] period as determined by HHSC; and the distribution of historical Medicaid days of service across non-state government-owned NFs enrolled in QIPP for the program [eligibility] period. HHSC will also share estimated maximum revenues each eligible and enrolled NF could earn under QIPP for the program [eligibility] period. Estimates are [with these estimates] based on HHSC's suggested IGT responsibilities and an assumption that all enrolled NFs will meet 100 percent of their quality metrics. The purpose of sharing this information is to provide non-state government-owned NFs with information they can use to determine the amount of IGT they wish to transfer.

(2) Sponsoring governmental entities will determine the amount of IGT they wish to transfer to HHSC for the entire program [eligibility] period and provide a declaration of intent to HHSC 15 business days before the first half of the IGT amount is transferred to HHSC.

(A) The declaration of intent is a form prescribed by HHSC that includes the total amount of IGT the sponsoring govern-

mental entity wishes to transfer to HHSC and whether the sponsoring governmental entity intends to accept Component One payments.

(B) The declaration of intent is certified to the best knowledge and belief of a person legally authorized to sign for the sponsoring governmental entity but does not bind the sponsoring governmental entity to transfer IGT.

(3) Sponsoring governmental entities will transfer the first half of the IGT amount by a date determined by HHSC. The second half of the IGT amount will be transferred by a date determined by HHSC. The IGT deadlines and all associated dates will be published on the HHSC QIPP webpage by January 15 of each year.

(4) Reconciliation. HHSC will reconcile the actual amount of the non-federal funds [actually] expended under this section during each program [eligibility] period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period using the methodology described in §353.1301(g) of this subchapter.

(g) QIPP capitation rate components. QIPP funds will be paid to MCOs through four components of the STAR+PLUS NF managed care per member per month (PMPM) capitation rates. The MCOs' distribution of QIPP funds to the enrolled NFs will be based on each NF's performance related to the quality metrics as described in §353.1304 of this subchapter. The NF must have had at least one Medicaid client in the care of that NF for each reporting period to be eligible for payments.

(1) Component One.

(A) The total value of Component One will be equal to 110 percent of the non-federal share of the QIPP.

(B) Interim allocation of funds across qualifying non-state government-owned NFs will be proportional, based upon historical Medicaid days of NF service.

(C) Monthly payments to non-state government-owned NFs will be triggered by achievement of performance requirements as described in §353.1304 of this subchapter.

(D) Private NFs are not eligible for payments from Component One.

(E) The interim allocation of funds across qualifying non-state government-owned NFs will be reconciled to the actual distribution of Medicaid NF days of service across these NFs during the program [eligibility] period as captured by HHSC's Medicaid contractors for fee-for-service and managed care 180 days after the last day of the program [eligibility] period. This reconciliation will only be performed if the weighted average (weighted by Medicaid NF days of service during the program [eligibility] period) of the absolute values of percentage changes between each NF's [NFs] proportion of historical Medicaid days of NF service and actual Medicaid days of NF service is greater than 18 percent.

(2) Component Two.

(A) The total value of Component Two will be equal to a percent of remaining QIPP funds after accounting for the funding of Component One and Component Four [30 percent of remaining QIPP funds after accounting for the funding of Component One and Component Four].

(i) For the program period September 1, 2019, through August 31, 2021, the percent will be equal to 30 percent.

(ii) For the program period beginning September 1, 2021, the percent will be equal to 40 percent.

(B) Allocation of funds across qualifying non-state government-owned and private NFs will be proportional, based upon historical Medicaid days of NF service.

(C) Monthly payments to NFs will be triggered by achievement of performance requirements as described in §353.1304 of this subchapter.

(3) Component Three.

(A) The total value of Component Three will be equal to a percent of remaining QIPP funds after accounting for the funding of Component One and Component Four [~~70 percent of remaining QIPP funds after accounting for the funding of Component One and Component Four~~].

(i) For the program period September 1, 2019, through August 31, 2021, the percent will be equal to 70 percent.

(ii) For the program period beginning September 1, 2021, the percent will be equal to 60 percent.

(B) Allocation of funds across qualifying non-state government-owned and private NFs will be proportional, based upon historical Medicaid days of NF service.

(C) Quarterly payments to NFs will be triggered by achievement of performance requirements as described in §353.1304 of this subchapter.

(4) Component Four.

(A) The total value of Component Four will be equal to 16 percent of the funds of the QIPP.

(B) Allocation of funds across qualifying non-state government-owned NFs will be proportional, based upon historical Medicaid days of NF service.

(C) Quarterly payments to non-state government-owned NFs will be triggered by achievement of performance requirements as described in §353.1304 of this subchapter.

(D) Private NFs are not eligible for payments from Component Four.

(5) Funds that are non-disbursed due to failure of one or more NFs to meet performance requirements will be distributed across all QIPP NFs based on each NF's proportion of total earned QIPP funds from Components One, Two, Three, and Four combined.

(h) Distribution of QIPP payments.

(1) Prior to the beginning of the program [eligibility] period, HHSC will calculate the portion of each PMPM associated with each QIPP-enrolled NF broken down by QIPP capitation rate component, quality metric, and payment period. For example, for a NF, HHSC will calculate the portion of each PMPM associated with that NF that would be paid from the MCO to the NF as follows.

(A) Monthly payments from Component One as performance requirements are met will be equal to the total value of Component One for the NF divided by twelve.

(B) Monthly payments from Component Two associated with each quality metric will be equal to the total value of Component Two associated with the quality metric divided by twelve.

(C) Quarterly payments from Component Three associated with each quality metric will be equal to the total value of Component Three associated with the quality metric divided by four.

(D) Quarterly payments from Component Four associated with each quality metric will be equal to the total value of Component Four associated with the quality metric divided by four.

(E) For purposes of the calculations described in subparagraphs (B), (C), and (D) of this paragraph, each quality metric will be allocated an equal portion of the total dollars included in the component.

(F) In situations where a NF does not have enough data for all [a] quality metrics [metric] to be calculated, the funding associated with that metric will be evenly distributed across all remaining metrics within the component. If a NF does not have enough data for any quality metrics to be calculated, no funds will be earned.

(2) MCOs will distribute payments to enrolled NFs as they meet their reporting and quality metric requirements. Payments will be equal to the portion of the QIPP PMPM associated with the achievement for the time period in question multiplied by the number of member months for which the MCO received the QIPP PMPM. In the event of a CHOW, the MCO will distribute the payment to the owner of the NF at the time of the payment.

(i) Changes of ownership.

(1) A NF undergoing a CHOW from privately owned to non-state government owned or from non-state government owned to privately-owned will only be eligible to enroll as the new class of facility if HHSC received a completed CHOW application no later than 30 days prior to the first day of the enrollment period. All required documents pertaining to the CHOW (i.e., HHSC must have a complete application for a change of ownership license as described under 26 TAC §554.201 [40 TAC §19.201] (relating to Criteria for Licensing)[;] and 26 TAC §554.210 [40 TAC §19.210] (relating to Change of Ownership and Notice of Changes)[;] and 40 TAC §19.2308 (relating to Change of Ownership)) must be submitted in the timeframe required by HHSC.

(2) If an enrolled NF changes ownership, including to a new class of facility following the enrollment period [during the pendency of the application] or during the program [eligibility] period, the NF under the new ownership must meet the eligibility requirements described in this section for the new owner's facility class in order to continue QIPP participation during the program [eligibility] period.

(3) An enrolled NF must notify the MCOs it has contracts with of a potential CHOW at least 30 days before the anticipated date of the CHOW. [An enrolled NF must also notify the HHSC Rate Analysis Department by hand delivery, United States (U.S.) mail, or special mail delivery at least 30 days before the anticipated date of the CHOW.] Notification is considered to have occurred when the MCO [HHSC] receives the notice.

(j) Changes in operation. If an enrolled NF closes voluntarily or ceases to provide NF services in its facility, the NF must notify the HHSC Provider Finance Department by email at qipp@hhsc.state.tx.us [Rate Analysis Department by hand delivery, United States (U.S.) mail, or special mail delivery within 10 business days of closing or ceasing to provide NF services]. Notification is considered to have occurred when HHSC receives the notice.

(k) Recoupment. Payments under this section may be subject to recoupment as described in §353.1301(j) and §353.1301(k) of this subchapter.

§353.1304. *Quality Metrics for the Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019.*

(a) Introduction. This section establishes the quality metrics that may be used in the Quality Incentive Payment Program (QIPP) for nursing facilities (NFs) on or after September 1, 2019.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this and other sections of this subchapter may be defined in §353.1301 (relating to General Provisions) or §353.1302 (relating to Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019) of this subchapter.

(1) Baseline--A NF-specific initial standard used as a comparison against NF performance in each metric throughout the program [eligibility] period to determine progress in the QIPP quality metrics. [For example, for MDS-based measures, the facility's baselines will be set at the most recently available four-quarter average for each metric.]

(2) Benchmark--A metric-specific initial standard set prior to the start of the program [eligibility] period and used as a comparison against a NF's progress throughout the program [eligibility] period. [For example, for MDS-based measures, the benchmarks will be set at the most recently published CMS National Average for each metric.]

(c) Quality metrics. For each program [eligibility] period, HHSC will designate one or more [of the following] quality metrics [for each QIPP capitation rate component]. Any quality metric included in QIPP will be evidence-based. HHSC may modify quality metrics from one program period to the next. The proposed quality metrics for a program period will be presented to the public for comment in accordance with subsection (f) of this section.

[(1) Quality assurance and performance improvement (QAPI) meetings. Monthly meetings in which the NF reviews its CMS-compliant plan for maintaining and improving safety and quality in the NF. QAPI meetings must contribute to a NF's ongoing development of improvement initiatives regarding clinical care, quality of life, and consumer choice. For the eligibility period beginning September 1, 2019, QAPI meetings have been designated as the quality metric for Component 1.]

[(2) MDS-based measures. Measures listed in CMS' Five-Star Quality Rating System and based on Minimum Data Set (MDS) assessment data. Within the Five-Star Quality Rating System, HHSC can select any MDS-based measure as long as there are viable data sources available for timely calculations related to the measure. For the eligibility period beginning September 1, 2019, the following five MDS-based measures may be used in Components Three and Four:]

- [(A) high-risk long-stay residents with pressure ulcers;]
- [(B) percent of residents who received an antipsychotic medication (long-stay);]
- [(C) percent of residents with decreased independent mobility;]
- [(D) percent of residents with urinary tract infections; and]
- [(E) percent of residents appropriately given the pneumonia vaccine.]

[(3) Recruitment and retention program. A program that includes a plan developed by the NF to improve recruitment and retention of staff and monitor outcomes related thereto. For the eligibility period beginning September 1, 2019, the recruitment and retention plan will be used in Component Two.]

[(4) RN staffing metrics. Registered nurse (RN) hours beyond and non-concurrent with the CMS-mandated eight hours of RN on-site coverage each day. On-site hours must be met by an RN, Advanced Practice Registered Nurse (APRN), Nurse Practitioner (NP), Physician Assistant (PA), or physician (Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO)). Telehealth services can be used to

meet some or all of the RN staffing metrics when a NF has telehealth policies and procedures developed in accordance with subsection (g) of this section. For the eligibility period beginning September 1, 2019, the following two RN staffing metrics will be used in Component Two:]

[(A) four hours of additional RN coverage per day; and]

[(B) eight hours of additional RN coverage per day. A NF that meets the eight hours of additional RN coverage per day will automatically qualify for the metric described in subparagraph (A) of this paragraph.]

[(5) Infection control program. A program that improves antibiotic stewardship and measures outcomes through the use of infection control and data elements. For the eligibility period beginning September 1, 2019, the infection control program will be used in Component Four, and the program will consist of the following infection control and data elements:]

[(A) whether a facility:]

[(i) has identified leadership individuals for antibiotic stewardship;]

[(ii) has created written policies on antibiotic prescribing;]

[(iii) has an antibiotic use report generated by a pharmacy within last 6 months;]

[(iv) audits (monitors and documents) adherence to hand hygiene (HH);]

[(v) audits (monitors and documents) adherence to personal protective equipment (PPE) use;]

[(vi) has an infection control coordinator who has received infection control training;]

[(vii) has infection prevention policies that are evidence-based and reviewed at least annually;]

[(viii) has a current list of reportable diseases;]

[(ix) knows points of contact at local or state health departments for assistance;]

[(B) the number of:]

[(i) vaccines administered to residents and employees;]

[(ii) residents with facility acquired Clostridium difficile diagnosis;]

[(iii) residents on antibiotic medications;]

[(iv) residents with multi-drug resistant organisms; and]

[(C) select infection rates.]

[(6) Other metrics related to improving the quality of care for Texas Medicaid NF residents. HHSC may develop additional metrics for inclusion in QIPP if there is a specific systemic data-supported quality concern impacting Texas Medicaid NF residents. Any metric developed for inclusion in QIPP will be evidence-based and will be presented to the public for comment in accordance with subsection (e) of this section.]

(d) Performance requirements. For each program [eligibility] period, HHSC will specify the performance requirements [requirement that will be] associated with [the] designated quality metrics. The proposed performance requirements for a program period will be presented to the public for comment in accordance with subsection (f) of this

section [metric]. Achievement of performance requirements will trigger payments for the QIPP capitation rate components as described in §353.1302 of this subchapter. [For some quality metrics, achievement is tested merely on a met versus unmet basis. Other metrics require a certain level of improvement, such as reaching a quarterly percentage goal. The following performance requirements are associated with the quality metrics described in subsection (e) of this section.]

[(1) QAPI meetings. Each month, a NF must attest on a form designated by HHSC that it convened a QAPI meeting. The NF must submit the form to HHSC by the first business day following the end of the month. Each quarter, HHSC will validate a random sample of the attestation forms. The NF that submitted the attestation form must provide the supporting documentation stated in the attestation form.]

[(2) MDS-based measures. A NF must show a five percent relative improvement on a quarterly basis over the baseline or exceed the benchmark for the selected measure.]

[(A) Baseline improvement is measured against quarterly targets determined by HHSC prior to the eligibility period.]

[(B) A NF that exceeds the benchmark for a measure qualifies for the payment from any related component. A NF that exceeds the benchmark may decline in performance and still qualify for a payment from the related component as long as the NF continues to exceed the benchmark for the measure.]

[(3) Recruitment and retention program. During the first month of the eligibility period, a NF must submit its recruitment and retention plan to HHSC. If substantive changes are made to the recruitment and retention plan, an update of the plan must be submitted to HHSC during the month in which the changes take effect.]

[(A) Failure to submit the recruitment and retention plan in the first month of the eligibility period will result in not meeting the metric for that month for the related component.]

[(B) Each subsequent month, a NF will submit to HHSC documentation produced during the development of self-directed staffing goals and in the monitoring of staffing outcomes, in accordance with the NF's recruitment and retention plan.]

[(C) Each quarter, HHSC will validate a random sample of recruitment and retention plans and outcome monitoring documentation. The NF that submitted the plan must provide supporting documentation, including policies and outcomes.]

[(4) RN staffing metrics. A NF meets the RN staffing metrics by showing that the facility was staffed at the required number of hours for at least 90 percent of the days in the reporting period.]

[(5) Infection control program. Each quarter, a NF must report:]

[(A) the presence of a number of infection control elements to exceed a quarterly benchmark. For the eligibility period beginning September 1, 2019, the NF must report the presence of seven of the nine elements in subsection (e)(5)(A) of this section to meet the metric; and]

[(B) all required data elements regarding infection control tracking in subsection (e)(5)(B) and (C) of this section.]

[(6) Other metrics related to improving the quality of care for Texas Medicaid NF residents. If HHSC develops additional metrics for inclusion in QIPP, the associated performance requirements will be presented to the public for comment in accordance with subsection (e) of this section.]

(e) Quality assurance. All data and documentation supplied to HHSC by the NF to demonstrate achievement of performance requirements is subject to validation and audit. HHSC will select a random, representative sample of participating NFs for quality assurance review each program period and will conduct reviews on one-fourth of the total sample each program quarter.

(1) If selected, the NF will have 14 business days from the date of the request from HHSC to submit to HHSC the required data and documentation.

(2) If the selected NF fails to participate in the review or to provide the required data or documentation, any payments to the provider for the quality metric or component under review may be considered an Overpayment and subject to recoupment or adjustment as described in §353.1301(k) of this subchapter.

(f) [(e)] Notice and hearing.

(1) HHSC will publish notice of the proposed metrics and their associated performance requirements no later than December 1 [31] of the calendar year that precedes the first month of the program [eligibility] period. The notice must be published either by publication on HHSC's Internet web site or in the *Texas Register*. The notice required under this section will include the following:

(A) instructions for interested parties to submit written comments to the HHSC regarding the proposed metrics and performance requirements; and

(B) the date, time, and location of a public hearing.

(2) Written comments will be accepted within 15 business days of publication. There will also be a public hearing within that 15-day period to allow interested persons to present comments on the proposed metrics and performance requirements.

(g) [(f)] Quality metric publication. Final quality metrics and performance requirements will be provided through the QIPP webpage on HHSC's website on or before February 1 of the calendar year that also contains the first month of the program [eligibility] period.

[(g) Telehealth. In order for a NF to use telehealth services to meet some or all of the RN staffing metric, the following requirements must be met:]

[(1) the telehealth services must be both audio and visual in nature;]

[(2) the telehealth services must be provided by an RN, APRN, NP, PA, or physician (MD or DO); and]

[(3) The NF must have policies and procedures for such services. The NF's policy must include the following:]

[(A) how the NF arranges telehealth services;]

[(B) how the NF trains staff regarding the availability of services, implementation of services, and expectations for the use of these services; and]

[(C) how the NF documents telehealth services including initiation of services, the services provided, and the outcome of services.]

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

Filed with the Office of the Secretary of State on May 14, 2021.
TRD-202101946



CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8217

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §355.8217, concerning Payments to Public Health Providers for Charity Care.

BACKGROUND AND PURPOSE

The purpose of the proposed new rule is to authorize HHSC to implement the Public Health Provider - Charity Care Program (PHP-CCP) payments to be available for eligible providers to help defray the uncompensated costs of charity care beginning October 1, 2022.

The PHP-CCP under the 1115 waiver reimburses certain costs for qualifying providers associated with providing care, including behavioral health, immunizations, chronic disease prevention, and other preventative services for the uninsured. This program was created as part of the 1115 waiver extension and will provide an opportunity for reimbursement of charity care costs (or Medicaid shortfall in the first year of the program).

In accordance with the Special Terms and Conditions of the 1115 waiver, to participate in the program, providers must be funded by a unit of government able to certify public expenditures. Publicly-owned and operated providers eligible to participate include:

(1) The following providers established under Texas Health and Safety Code Chapters 533 or 534 and primarily providing behavioral health services:

- (a) Community Mental Health Clinics (CMHCs)
- (b) Community Centers
- (c) Local Behavioral Health Authorities (LBHAs)
- (d) Local Mental Health Authorities (LMHAs)

(2) Local Health Departments (LHDs) and Public Health Districts (PHDs) established under the Texas Health and Safety Code Chapter 121.

SECTION-BY-SECTION SUMMARY

Proposed new §355.8217(a) establishes the transition of the PHP-CCP to reimburse for charity care costs beginning October 1, 2022.

Subsection (b) defines key terms used in the section.

Subsection (c) describes the participation requirements of the qualifying providers that wish to participate in the program, including the application and cost report process. To participate, a

provider must: 1) indicate it is a qualifying provider, 2) attend annual training, 3) submit an annual uncompensated care tool for charity care costs by the due date and certify costs in a manner specified by HHSC, and 4) certify that no part of the PHP-CCP payment will be used to pay a contingency fee.

Subsection (d) describes the source of funding of the program. The non-federal share of funding for payments under this section is limited to public expenditures certified by a government entity.

Subsection (e) describes the payment frequency of the program on a schedule to be determined by HHSC and posted on HHSC's website.

Subsection (f) describes the calculation of the payment and funding limitations if the payments for charity care for the provider pool are expected to exceed the amount of funds allocated to that pool by HHSC.

Subsection (g) describes the recoupment procedures in the event of an overpayment, whether directly recouped from the provider or through HHSC withholding from future Medicaid payments.

Subsection (h) describes the notice requirements if there are changes in the operation of the provider, such as closing voluntarily or ceasing to provide Medicaid services.

Subsection (i) provides general information as to how the cost reporting guidelines will be governed using other sections of 1 TAC Chapter 355, Subchapter A.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years the proposed rule is in effect, there will be no cost to state government as a result of enforcing and administering the rule as proposed. For each year of the first five years the proposed rule is in effect, there will be a cost to local government.

The effect on local governments cannot be determined because HHSC lacks sufficient data to know how many providers will choose to apply for the program and at what level.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro businesses, or rural communities to comply with the proposed rule. Small businesses and micro businesses are not subject to the proposed rule, and because participation in the program is optional, there is no adverse economic effect on rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule may affect a local economy as the units of local government that receive reimbursement through this program may choose to invest those funds in additional employment opportunities or other local needs.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons, and the rule is necessary to receive a source of federal funds.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be improved health outcomes as a result of increased funding for certain units of local government.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because participation in the program is optional.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for June 14, 2021, at 11:30 a.m. (Central Daylight Time) to receive public comments on the proposal. Persons requiring further information, special assistance, or accommodations should email PHP-CCP@hhs.texas.gov.

Due to the declared state of disaster stemming from COVID-19, the hearing will be conducted online only. No physical entry to the hearing will be permitted.

Persons interested in attending may register for the public hearing at: <https://attendee.gotowebinar.com/register/5929398341149150992>.

After registering, a confirmation email will be sent with information about joining the webinar.

HHSC will broadcast the public hearing. The broadcast will be archived for access on demand and can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code H400, P.O. Box 13247, Austin, Texas 78711-3247, or by email to PHP-CCP@hhs.texas.gov.

During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. Therefore, please submit comments by email if possible.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R076" in the subject line.

STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

The new rule affects Texas Human Resources Code Chapter 32 and Texas Government Code Chapter 531.

§355.8217. Payments to Public Health Providers for Charity Care.

(a) Introduction. Beginning October 1, 2022, Public Health Provider - Charity Care Program (PHP-CCP) payments are available under this section for eligible providers to help defray the uncompensated costs of charity care.

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

(1) Centers for Medicare and Medicaid Services (CMS)-- The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(2) Charity care--Healthcare services provided without expectation of reimbursement to uninsured patients who meet the provider's charity-care policy. The charity-care policy should adhere to the charity-care principles of the Healthcare Financial Management Association Principles and Practices Board Statement 15 (December 2019). Charity care includes full or partial discounts given to uninsured patients who meet the provider's financial assistance policy. Charity care does not include bad debt, courtesy allowances, or discounts given to patients who do not meet the provider's charity-care policy or financial assistance policy.

(3) Program period--A period of time for which eligible and enrolled providers may receive the PHP-CCP amounts described in this section. Each PHP-CCP period is equal to a Federal Fiscal Year (FFY) beginning October 1 and ending September 30 of the following year.

(4) Qualifying Providers--Publicly-owned and operated Community Mental Health Clinics (CMHCs), community centers, Local Behavioral Health Authorities (LBHAs), and Local Mental Health Authorities (LMHAs) that are established under the Texas Health & Safety Code Chapter 533 or 534 and are primarily providing behavioral health services, and publicly-owned and operated Local Health Departments (LHDs) and Public Health Districts (PHDs) that are established under the Texas Health and Safety Code Chapter 121.

(5) Total program value--The maximum amount available under PHP-CCP for a program period, as determined by the Texas Health and Human Services Commission (HHSC) and CMS.

(6) Uncompensated care payments--Payments intended to defray the charity care costs as defined in paragraph (3) of this subsection.

(7) Uncompensated care tool--A form prescribed by HHSC to identify charity care costs for Medicaid-enrolled providers and used to enroll in the program.

(8) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for the services provided. The term includes an individual enrolled in Medicaid who received services that do not meet the definition of "medical assistance" in the Social Security Act §1905(a).

(9) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under Social Security Act §1115.

(c) Participation requirements.

(1) Qualifying provider. A provider must indicate it is a qualifying provider as defined in subsection (b) of this section to be considered for reimbursement in the application process.

(2) PHP-CCP financial training. HHSC provides annual training to participating qualifying providers.

(A) Each primary PHP-CCP financial contact must attend and receive credit for training for each program period in which the provider chooses to participate.

(B) Training is provided for each program period and is not retroactive.

(C) A provider that does not have a trained PHP-CCP financial contact who is an employee of the provider is prohibited from submitting a PHP-CCP application. Provider-contracted vendors are not permitted to enter a provider's data into the cost report for any provider that does not have a trained PHP-CCP financial contact who is an employee of the provider.

(3) Cost reports. Qualifying providers must submit an annual uncompensated care tool for charity care costs. Uncompensated care tools must be completed for a full year based on the federal fiscal year.

(A) The uncompensated care tool format will be specified by HHSC. Qualifying providers certify through the cost report process their total actual federal and non-federal costs and expenditures for the program period. Costs must be reported in a manner that is consistent with the PHP-CCP protocol that is approved under the 1115 Waiver.

(B) The cost report is due on or before November 14 of the year of the program period ending date and must be certified in a manner specified by HHSC.

(i) If November 14 falls on a federal or state holiday or weekend, the due date is the first working day after November 14.

(ii) A provider whose cost report is not received by the due date is ineligible for PHP-CCP payment for the federal fiscal year.

(C) HHSC reserves the right to request a corrective action plan (CAP) from providers who submit incorrect cost reports or bill incorrectly. PHP-CCP payments will be withheld until the CAP is accepted by HHSC.

(D) Costs for care delivered to persons who are incarcerated at the time of the care must be excluded from the cost report.

(E) Costs for care delivered as part of an Institution of Mental Disease (IMD) must be excluded from the cost report. If a provider includes costs for Crisis Stabilization Units on their cost report, and the unit is later determined by CMS to be an IMD, associated PHP-CCP payments are subject to recoupment.

(4) Certification. The provider must certify, on a form prescribed by HHSC, that no part of any PHP-CCP payment will be used to pay a contingent fee and that the entity's agreement with a billing entity or cost report preparer does not use a reimbursement methodology that contains any type of incentive, directly or indirectly, for inappropriately inflating, in any way, claims billed to the Medicaid program, including the provider's PHP-CCP funds. The certification must be received by HHSC with the enrollment application described in paragraph (3) of this subsection.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to certified public expenditures from governmental entities.

(e) Payment frequency. HHSC will distribute uncompensated care payments on a schedule to be determined by HHSC and posted on HHSC's website.

(f) Calculation of supplemental payment.

(1) Supplemental payment. A qualifying provider may be eligible to receive a supplemental payment equal to a percentage of its charity care costs for the cost reporting period.

(2) Funding limitations. Payments made under this section are limited by the amount of funds allocated to the total program value for the demonstration year. If payments for charity care for the provider pool attributable to a demonstration year are expected to exceed the amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool by the same percentage as required to remain within the pool allocation amount.

(g) Recoupment.

(1) Overpayment or disallowance. In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a provider's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance.

(2) Adjustments. Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Texas Government Code Chapter 403. HHSC may recoup an amount equivalent to any such adjustment.

(3) Recoupment method. HHSC may recoup from any current or future PHP-CCP payments as follows:

(A) HHSC will recoup from the provider against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the provider's receipt of HHSC's written notice of recoupment, the provider has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future PHP-CCP payments from the provider until HHSC has recovered an amount equal to the amount overpaid or disallowed. Electronic notice and electronic agreement may be used as alternative options at HHSC's discretion.

(h) Changes in operation. If an enrolled provider closes voluntarily or ceases to provide Medicaid services, the provider must notify the HHSC Provider Finance Department by hand delivery, United States (U.S.) mail, or special mail delivery within 10 business days of closing or ceasing to provide Medicaid services. Notification is considered to have occurred when the HHSC Provider Finance Department receives the notice.

(i) General information. In addition to the requirements of this section, the cost reporting guidelines will be governed by §355.101 of this chapter (relating to Introduction); §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this chapter (relating to Revenues); §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this chapter (relating to Notification of Exclusions and Adjustments); §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); and §355.110 of this chapter (relating to Informal Reviews and Formal Appeals).

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 17, 2021.

TRD-202101955

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 424-6637 or (512) 462-6223



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER C. LICENSING

4 TAC §7.21

The Texas Department of Agriculture (the Department) proposes an amendment to Texas Administrative Code, Title 4, Part 1, Chapter 7, Subchapter C, Licensing, §7.21. The amendment is proposed under the Texas Agriculture Code, Chapter 76, as amended by Senate Bill (SB) 1312, 86th Legislature, Regular Session, 2019. SB 1312 mandated the issuance of a noncommercial applicator license that authorizes a person to purchase and use restricted-use and state-limited-use pesticides for the limited purpose of mosquito control in a county located along the international border with Mexico.

The proposed amendment to §7.21 establishes category definitions and defined use-sites for noncommercial political license use category for which the department is responsible. The proposed amendment will define and establish a new category to certify an applicator in border mosquito control, category 13.

Perry Cervantes, Director of Environmental and Biosecurity Programs, has determined that for the first five-year period the proposal is in effect, there will be no fiscal implications for state or local government.

Mr. Cervantes has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering the proposed rule will be the prevention of mosquitoes that may carry vector borne diseases to humans.

Mr. Cervantes has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. As a result of implementing the proposal, the first five years of the proposed rules are in effect:

- (1) no Department programs will be created or eliminated;
- (2) no employee positions will be created, nor will existing Department staff positions be eliminated;
- (3) there will not be an increase or decrease in future legislative appropriations to the Department;
- (4) there will not be an increase in fees paid to the Department;
- (5) there will be no new regulations created by the proposal;
- (6) there will be no expansion, limitation or repeal of existing regulations;
- (7) there will be a minimal increase to the number of individuals subject to the proposed rule's applicability, as the category is limited to employees of a federal, state, county, city, mosquito or vector control district or other political subdivision or a person under the direct supervision of such licensee in counties along the international border with Mexico; if this category is not adopted, these employees would be required to be licensed under §7.21(a)(12); and
- (8) the proposal will have a positive impact on the Texas economy, as it will reduce the potential for mosquito borne diseases in humans along the international border with Mexico.

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

Written comments on the proposal may be submitted to Perry Cervantes, Director of Environmental and Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: RuleComments@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Section 76.1095 of the Texas Agriculture Code, which provides the Department by rule shall provide for the issuance of a noncommercial applicator license that authorizes a person to purchase and use restricted-use and state-limited-use pesticides for the limited purpose of mosquito control in a county located along the international border with Mexico.

Chapter 76 of the Texas Agriculture Code is affected by the proposal.

§7.21. *Applicator Certification.*

(a) Certification of Applicators. The department may certify pesticide applicator licensees and applicants for a license in the fol-

lowing license use categories and subcategories. An individual who is certified in a particular category is authorized to purchase, apply, or supervise the use of restricted use pesticides, state limited use pesticides or regulated herbicides described by that category subject to agency orders, Chapter 76 of the Texas Agriculture Code and federal law.

(1) - (11) (No change.)

(12) Public health pest control (vector control): for pesticide applications made for the purpose of treating, repelling, mitigating, or otherwise controlling any non-human organism that is, or may be, a vector of human disease by a pesticide applicator who is an employee of, or an independent contractor for, a federal, state, county, city, mosquito or vector control district or other political subdivision, or a person working under the direct supervision of a pesticide applicator who is an employee of, or an independent contractor for, a federal, state, county, city, mosquito or vector control district or other political subdivision; and[-]

(13) Border mosquito control: for pesticide applications made for the limited purpose of vector mosquito control only in a county located along the international border with Mexico by an applicator who is an employee of a federal, state, county, city, mosquito or vector control district or other political subdivision, or a person working under the direct supervision of a pesticide applicator who is an employee of a federal, state, county, city, mosquito or vector control district or other political subdivision. An applicator who is licensed in this category shall have their license expire immediately upon separation of employment if a passing score in another category is not achieved prior to the date of separation of employment from the political subdivision. This excludes employees transferring from one political subdivision to another in a county along the international border with Mexico.

(b) (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 12, 2021.

TRD-202101865

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 27, 2021

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



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.3

The Texas Department of Housing and Community Affairs (the Department) proposes the amendment of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.3, Sick Leave Pool. The purpose of the proposed amendment is to clarify the Department's policy for its sick leave pool.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed amendment would be in effect:

1. The proposed amendment does not create or eliminate a government program but relates to changes to the Department's sick leave pool policy.

2. The proposed amendment does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed amendment does not require additional future legislative appropriations.

4. The proposed amendment will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed amendment is not creating a new regulation.

6. The proposed amendment does not repeal a rule.

7. The proposed amendment will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed amendment will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the proposed amendment and determined that the proposed amendment will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed amendment does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed amendment as to its possible effects on local economies and has determined that for the first five years the proposed amendment would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the changed sections would be a clear policy relating to the Department's sick leave pool. There will not be economic costs to individuals required to comply with the amendment section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 28, 2021, to June 28, 2021, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, June 28, 2021.

STATUTORY AUTHORITY. The proposed amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed amended section affects no other code, article, or statute.

§1.3. Sick Leave Pool.

A sick leave pool is established to help alleviate hardship caused to an employee and employee's immediate family if a catastrophic illness or injury forces the employee to exhaust all accrued paid [siek] leave time earned by that employee and to lose compensation from the state.

(1) The Department's Human Resources Director is designated as the pool administrator.

(2) The pool administrator will recommend a policy, operating procedures, and forms for the administration of this section to the Executive Director for inclusion in the Department's Personnel Policies and Procedures Manual.

(3) Operation of the pool shall be consistent with Tex. [Texas] Gov't Code, Chapter 661, as amended.

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 14, 2021.

TRD-202101929

Bobby Wilkinson
Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 475-1762



CHAPTER 5. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.802

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.802, Waiting List. The purpose of the rule is to provide how the Department, in its role as a public housing authority, will handle the waiting list in its 34-county jurisdiction including how the opening of the waiting list will be announced, affirmative outreach and marketing, how the waiting list process will be operationalized, language access considera-

tions, reasonable accommodations, how households will be issued vouchers from the list, and notifications to households.

The Department has analyzed this rulemaking action and the analysis is described below for each category of analysis performed.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions are applicable. While there are outreach and advertising costs associated with the opening of a PHA waiting list, these outreach and marketing steps are required by the U.S. Department of Housing and Urban Development (HUD) and are therefore necessary to ensure federal compliance. All costs are paid for by the federal administrative funds associated with the vouchers.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rule will be in effect, the rule does not create or eliminate a government program, but relates to the process used to accept applications for an existing program, the Section 8 Housing Choice Voucher (HCV) program.

2. The proposed rule does not require a change in work that will require the creation of new employee positions, nor will the rule reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed rule does not require additional future legislative appropriations.

4. The proposed rule does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed rule is creating a new regulation, however it is not placing regulatory requirements on any other parties, but merely providing for the transparent process used in the existing HCV program.

6. The action will not repeal any rule.

7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability as the rule merely provides the methods by which an applicant can apply for a HCV voucher.

8. The proposed rule will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed rule and determined that the rule will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed rule does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect there will be no economic

effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the rule would be the provision of a clear policy for the administration of the Department's waiting list. There will not be economic costs to individuals required to comply with the rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed action is in effect, enforcing or administering the rule has minimal implications related to costs or revenues of the state or local governments. There are outreach and advertising costs associated with the opening of a PHA waiting list which are required by HUD and necessary to ensure federal compliance. All costs are paid for by the federal administrative funds associated with the vouchers.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 28, 2021, to June 28, 2021, to receive input on the proposed rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time June 28, 2021.

STATUTORY AUTHORITY. The rule is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein, the rule affects no other code, article, or statute.

§5.802. Waiting List

(a) Purpose. The U.S. Department of Housing and Urban Development (HUD) requires that the Texas Department of Housing and Community Affairs (the Department), in its role as a public housing authority (PHA) administering a Housing Choice Voucher (HCV) program, adopt a clear approach to accepting applications, placing households on the waiting list, and selecting households from the waiting list. This rule provides the Department's policies for taking applications, managing the waiting list and selecting households for HCV assistance specifically for its 34-county jurisdictional area.

(b) Applicability.

(1) This rule is applicable only to the specific geographically limited jurisdiction of the Department. This jurisdictional area is comprised of discrete areas within counties (currently 34), but may be expanded or reduced upon action of the Board. The jurisdictional area reflected on the Department's website will serve as the jurisdictional area for the purpose of this rule.

(2) This rule does not apply to the waiting list for statewide Project Access vouchers which is addressed in §5.801 of this chapter (relating to Project Access Initiative). The rule does not address the specific waiting list process for project-based vouchers administered by the Department or for VASH vouchers administered by the Department. Should any special purpose vouchers be received by the Department that serve specific populations or geographic areas other than the geographically limited jurisdiction of the Department referenced in paragraph (1) of this subsection, these waiting lists policies are not required to be utilized. Additionally, certain households might be accepted into the HCV program if required by 24 CFR §982.203, or at the

direction of HUD, as directed by a court of law, or as part of a TDHCA conciliation agreement.

(c) Definitions and HUD Regulations.

(1) While the HUD regulations in 24 CFR Parts 5, §§903 and 982 use the word "family," in order to be consistent with other rules in this Part, this rule will use the word "household." Both words are intended to have the same meaning.

(2) Nothing in this rule is intended to conflict with federal statutes or regulations that govern the HCV assistance. If HUD mandates a process or procedure to be used for application or waiting list management that is not identified in this rule, the Department will follow HUD's direction and will amend this rule as soon as practicable.

(d) Outreach and Affirmative Marketing.

(1) HUD regulations require that all households have an equal opportunity to apply for and receive housing assistance, and that the PHA affirmatively further fair housing goals in the administration of the program (24 CFR §982.53).

(2) The Department will conduct sufficient outreach to ensure that a sufficient number of applications will be received. HUD requires that at least 75% of the households served by the Department are extremely low-income households, and therefore the Department may need to conduct special outreach to ensure that an adequate number of extremely low-income households apply for assistance. All outreach will specify the number of households that will be accepted onto the waiting list.

(3) All outreach efforts relating to the opening of the waiting list will take place at least 7 calendar days prior to the first day of the application acceptance period, but no longer than 45 calendar days prior to the first day of the application acceptance period.

(4) Prior to performing outreach efforts for the opening of the waiting list, the Department will analyze the characteristics of the population being served by the program and the characteristics of the population as a whole in the PHA's jurisdiction to identify underserved populations. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are underrepresented in the program. Outreach materials will be provided in English, Spanish, and any other language as determined by a 4-factor analysis within each county service area.

(5) Outreach efforts will include:

(A) marketing through press releases to local newspapers, including minority newspapers;

(B) communicating with councils of governments, regional planning councils, and community action agencies, whose jurisdictions include any one of the counties in the jurisdiction of the Department, to:

(i) request that they distribute informational materials and flyers to their clients;

(ii) offer training so that they can assist households with submitting an online application; and

(iii) request that they make available a computer or web interface for clients to apply;

(C) developing partnerships with other organizations that serve the low-income population and agencies that provide services to elderly persons, people with disabilities, and people with Limited English proficiency (LEP); and

(D) clear guidance on how a person with a disability can request a reasonable accommodation for the application process.

(6) The Department will maintain a designated telephone number where interested persons can receive specific directions on how and when to apply.

(e) Application.

(1) The Department will utilize an electronic application process available in multiple languages.

(2) Any household that wishes to receive HCV assistance must apply for admission to the program.

(3) All applications must be received through the Department's online application tool. Applications received in the mail or by hand delivery will not be considered.

(4) To be placed on the waiting list only an initial pre-application is required to be submitted. However, the Department may elect to skip the pre-application and use only the full application. Only when an applicant is being pulled from the waiting list to be offered a voucher will a full application submission be required. Form HUD-92006, Supplement to Application for Federally Assisted Housing, must be submitted as an attachment to the Department's full application. A household must submit the completed pre-application or application to ensure that the Department receives the information needed to determine the household's eligibility.

(5) Application Acceptance Period. Applications will be accepted for a 14 calendar day period.

(6) Individuals who have a disability which would prevent them from making an application online may call the Department to make special arrangements so that Department staff can complete their application in time to be included in the lottery process. A Telecommunications Device for the Deaf (TDD) is available for the deaf.

(f) Placement on Waiting List.

(1) No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list (24 CFR §982.202(c)).

(2) Placement on the waiting list does not indicate that the household is, in fact, eligible for assistance. A final determination of eligibility will be made when the household is selected from the waiting list.

(3) Creation of Waiting List. The Department will establish a single waiting list for its jurisdictional area. The Department will announce in its outreach documents the total number of households it will place on its waiting list. Except for households on a project-based waiting list, all households that are on a special purpose waiting list at the beginning of the application acceptance period and that wish to live in the Department's jurisdictional area will be placed first on the jurisdictional waiting list based on the time they have been on the special purpose waiting list (i.e. oldest time on any special purpose waiting list gets assigned the first number). All other applications received during the application acceptance period will be assigned a number using a random number generator, called a lottery process. These applications will then be placed in numerical order according to that assigned number. The Department will then place applicants on the waiting list up to the number of households the Department announced it would accept on its waiting list in rising numerical order (inclusive of the households automatically placed on the jurisdictional waiting list because they were on a special purpose waiting list at the beginning of the application acceptance period). All other applications not within the number being accepted on the wait list will not be placed on the

waiting list. All applications submitted will be notified in writing of having been added to the waiting list and their number ranking, or that they were not placed on the waiting list.

(4) Ineligible for Placement on the Waiting List. If the Department can determine from the information provided that a household is ineligible, the household will not be placed on the waiting list or be able to participate in the lottery process described in this section for placement on the waiting list. Where a household is determined to be ineligible, the Department will send written notification of the ineligibility determination within 14 calendar days of receiving the complete application from the Department at the Department headquarters (24 CFR §982.201(f)). The notice will specify the reasons for ineligibility, and will inform the household of its right to request an informal review and explain the process for doing so.

(5) Applicants with Special Purpose Characteristics. The application for the jurisdictional waiting list will ask if the household qualifies for any of the open special purpose waiting lists that the Department maintains, except for a project-based waiting list or a waiting list in which a household may not directly apply. The applicant household, if qualified, may be added to one or more special purpose waiting lists at the end of the application acceptance period, but this will not impact their lottery number for the jurisdictional waiting list.

(6) If the Department permanently absorbs vouchers from another housing authority and is reassigned the contract by HUD, the waiting list from the other housing authority will be maintained, in its existing order, but will not be further expanded. That waiting list will be treated as separate from the rest of the Department's waiting list until it has been depleted. If after absorption of that area, the Department opens its jurisdictional waiting list, applicants located in the absorbed area will be eligible to also apply to this waiting list.

(g) Selection of Households from the Waiting List.

(1) The actual order in which households are selected from the waiting list can be affected if a household has certain characteristics designated by HUD or the Department to receive preferential treatment, such as being impacted by a particular declared disaster. Funding earmarked exclusively for households with particular characteristics may also alter the order in which households are served. HUD requires that extremely low-income (ELI) households make up at least 75% of the households admitted to the HCV program during the Department's fiscal year. ELI households are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, the Department may skip non-ELI household on the waiting list in order to select an ELI household. (24 CFR §982.201(b)(2)). The skipped non-ELI household will retain its position on the waiting list. Low-income households admitted to the program that are "continuously assisted" under the 1937 Housing Act (24 CFR 982.4(b)), as well as low-income or moderate-income households admitted to the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes (24 CFR §982.201(b)(2)(v)).

(2) When a voucher becomes available, the Department will select the household at the top of the waiting list. The order of admission from the waiting list IS NOT based on household size, or on the household unit size for which the household qualifies under the occupancy guidelines. If the Department does not have sufficient funds to subsidize the household unit size of the household at the top of the waiting list, the Department WILL NOT skip the top household to admit an applicant with a smaller household unit size. Instead, the household at the top of the waiting list will be admitted when sufficient funds are available. (24 CFR §982.204(d) and (e)).

(3) When a household comes to the top of the waiting list and the Department is ready to issue a voucher, the household will be notified and required to complete the full application. The household will also be required to complete a Personal Declaration Form. A household that does not respond to the request for full application more than three times will be sent a notice consistent with program policies removing them from the waiting list.

(4) A household's decision to apply for, receive, or refuse non-PHA federal, state, or local housing assistance will not affect the household's placement on the jurisdictional waiting list, or any preferences for which the household may qualify, except as specified in §5.801 of this chapter.

(h) Reporting Changes in Household Circumstances While On the Waiting List. While a household is on the waiting list, the household must immediately inform the Department of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing. Failure to provide this information may prevent the Department from being able to reach a household if a voucher becomes available and may result in removal from the waiting list.

(i) Updating of the Waiting List and Removal from the Waiting List.

(1) To insure that the Department's waiting list reflects the most current applicant information the waiting list may be updated no less than every twelve months.

(2) Process.

(A) To update the waiting list, the Department will send an update request to each household on the waiting list to determine whether the household continues to be interested in, and qualifies for, the program. This update request will be sent to the last address on record for the household and to any email address provided by the household.

(B) The update request will provide a deadline by which the household must respond, which will be approximately 10 days from the date the letter is sent, and will state that failure to respond will result in the applicant's name being removed from the waiting list.

(C) The household's response to the Department must be in writing and may be delivered, by mail, or by email. Responses should be postmarked or received by the Department no later than the deadline specified in the Department's letter.

(D) If the household fails to respond by the specified deadline, the household will be removed from the waiting list without further notice. If the notice is returned to the Department by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice. If the notice is returned to the Department by the post office with a forwarding address, the notice will be re-sent to the address indicated. The household will have a new deadline specified by which to respond.

(3) Removal from the Waiting List.

(A) If a household is removed from the waiting list for failure to respond, the Department may reinstate the household to their former position on the waiting list if it determines that the lack of response was due to Department error, or to circumstances beyond the household's control. Greater flexibility in this criteria may be provided as a reasonable accommodation.

(B) If a household is removed from the waiting list because they have failed to respond to the Department's request for more information/updates or the Department has determined that they are no

longer eligible for assistance, a notice will be sent to the household's address of record as well as to any alternate address or email address provided on the initial application. The notice will state the reasons the household was removed from the waiting list and will inform the household that they have 10 calendar days from the date of the written correspondence to request an informal review of the Department's decision (24 CFR §982.201(f)).

(C) If a household accepts a tenant-based public housing voucher from the Department, the household will be removed from all tenant-based public housing Department waiting lists.

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 14, 2021.

TRD-202101930

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 475-1762

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 98. MOTORCYCLE OPERATOR TRAINING AND SAFETY

16 TAC §§98.10, 98.20 - 98.23, 98.26, 98.70, 98.100, 98.104, 98.106, 98.108, 98.110, 98.112, 98.114, 98.116

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 98, §§98.10, 98.20-98.23, 98.26, 98.70, 98.100, 98.104, 98.106, 98.108, 98.110, 98.112, 98.114; and proposes a new rule at §98.116, regarding the Motorcycle and ATV Operator Safety Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 98 implement Texas Transportation Code, Chapter 662, Motorcycle Operator Training and Safety.

The proposed rules update requirements related to eligibility for motorcycle school and instructor licenses; protective gear worn by instructors; approval of training sites; documentation for student admission to courses; issuance of course completion certificates; student-to-instructor ratios; personnel and activities allowed on the range; and approval of course curricula, including new standards for instructor preparation courses. The proposed rules are necessary to implement changes recommended by Department staff and the Licensing and Renewal Workgroup, the Education and Examination Workgroup, and the Operations and Logistics Workgroup of the Motorcycle Safety Advisory Board to increase the effectiveness and efficiency of the program.

The proposed rules were presented to and discussed by the Motorcycle Safety Advisory Board at its meeting on April 29, 2021. The Advisory Board made the following changes to the

proposed rules: Proposed new §98.104(d) was changed by adding "verbally or"; proposed new §98.104(d)(2) and proposed new §98.106(d) were changed by adding ", as determined by the instructor,"; and §98.108 was changed to remove subsection (d) and relabel the remaining subsections accordingly. The Advisory Board voted and recommended that the proposed rules with changes be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §98.10, Definitions. The proposed rules amend the definition of "entry-level course" to clarify its applicability to a Class M endorsement on a driver's license and to clarify that the term includes intermediate courses. The proposed rules add definitions for "instructor preparation course" and "TEEX" and renumber the remaining definitions accordingly.

The proposed rules amend §98.20, Instructor--License Required, by placing the current rule language into new subsection (a) and adding language to provide the requirements for an individual teaching an instructor preparation course. The proposed rules create new subsection (b) to clarify that an individual performing instructor activities as part of an instructor preparation course administered by TEEX is not in violation of the requirement to hold an instructor license.

The proposed rules amend §98.21, Instructor--License Eligibility, by placing the current rule language into new subsection (a); adding new subsection (a)(9) to require an applicant for an instructor license to undergo and successfully pass a criminal history background check; adding new subsection (a)(10) to require an applicant for an instructor license to not have been convicted within the preceding seven years of certain crimes involving driving while intoxicated; and adding new subsection (b) to provide alternative eligibility requirements for instructor license applicants who meet certain training and experience requirements.

The proposed rules amend §98.22, Instructor--Preparation Course, by updating cross-references; adding new subsection (b)(2) to clarify that an individual may not enroll in an instructor preparation course if the individual's criminal history will make the individual ineligible for an instructor license; and adding new subsection (c) to inform individuals of their ability to request a criminal history evaluation letter from the department to determine if their criminal history will affect their eligibility for an instructor license.

The proposed rules amend §98.23, Instructor--License Term; Renewal, by updating cross-references in subsection (c) and adding new subsection (d) to protect current instructors from being disqualified for license renewal by the addition of the eligibility requirements in new §98.21(a)(10) concerning convictions for crimes involving driving while intoxicated.

The proposed rules amend §98.26, Motorcycle School--License Eligibility, by requiring each controlling person of an applicant for a motorcycle school license to undergo and successfully pass a criminal history background check.

The proposed rules amend §98.70, Instructor--Responsibilities, by updating cross-references in subsections (a)(3) and (a)(4); amending subsection (a)(14) to require instructors to wear protective gear whenever riding a motorcycle to, from, or during rider training activities; moving to subsection (a)(15) the requirement for instructors to ensure all students wear protective gear whenever riding a motorcycle on the range; and renumbering the remaining paragraph accordingly.

The proposed rules amend §98.100, Training Site Requirements, by placing the current rule language into new subsection (a); creating new subsection (a)(1)(F) to require each range to be surrounded by a paved run-off area of at least 20 feet; and adding new subsection (b) to clarify that a classroom is not required to be a physical building and that a virtual classroom conducted online is allowed.

The proposed rules amend §98.104, Student Admission Requirements. The proposed rules amend subsection (c) to require written consent of a parent or legal guardian for an individual younger than 18 years of age to participate as a student in a course. The proposed rules add new subsection (d) to require motorcycle schools to inform potential students of entry-level courses of the school's policy regarding multiple attempts to pass the knowledge examination and the riding skills test and the requirement for a student to be removed from the course if the student's riding performance creates an unmanageable danger. The proposed rules add new subsection (e) to require motorcycle schools to inform students of any course in writing of the Department's contact information for reporting complaints.

The proposed rules amend §98.106, Verification of Course Completion, by adding new subsection (d) to require course completion certificates for entry-level courses to be issued only to students who have successfully completed all elements of the course; to clarify that a motorcycle school may allow multiple attempts at passing the knowledge examination and the riding skills test; and to require that a student must be removed from the course if the student's riding performance creates an unmanageable danger.

The proposed rules amend §98.108, Course Requirements. The proposed rules amend subsection (c) to increase the maximum allowable student-to-instructor ratio for range instruction to eight students per instructor. The proposed rules repeal subsection (d) and relabel the remaining subsections accordingly. The proposed rules amend subsection (e) to become new subsection (d) and to allow two students to share a three-wheeled motorcycle. The proposed rules amend subsection (f) to become new subsection (e). The proposed rules add new subsection (f) to limit the persons allowed on the range during range instruction to instructors, students, interpreters or other assistants for persons with disabilities, and range assistants who meet certain age, employment, and training requirements. The proposed rules add new subsection (g) to specify the activities that range assistants are allowed to do.

The proposed rules amend §98.110, Approval of Course Curriculum, to clarify that notification of approval or denial of a course curriculum will be sent to the applicant.

The proposed rules amend §98.112, Curriculum Standards--Entry-Level Course, to clarify that the Department will determine if a curriculum meets the Model National Standards for Entry-Level Motorcycle Rider Training and to add the requirements that the curriculum must include a knowledge examination and a riding skills test, must be consistent with the program statutes and rules, and must be submitted along with an instructor preparation course that prepares individuals to teach the curriculum.

The proposed rules amend §98.114, Curriculum Standards--Non-Entry-Level Course, to add the requirement that the curriculum must be consistent with the program statutes and rules.

The proposed rules create new §98.116, Curriculum Standards--Instructor Preparation Course, to provide standards for Depart-

ment approval of an instructor preparation course, including requirements that the curriculum must prepare an individual to competently teach an entry-level course and must be consistent with the program statutes and rules.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of the state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be increased safety of all persons involved in motorcycle operator training; increased access to licensure for qualified out-of-state instructors; better informed decision-making by prospective students; and greater capacity for student enrollment in courses.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do create a new regulation. The proposed rules create new curriculum standards for instructor preparation courses.

6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules expand regulations relating to instructor license eligibility by adding a requirement that the applicant must not have been convicted within the past seven years of certain driving while intoxicated offenses, and by providing alternative eligibility requirements for out-of-state applicants with certain training and experience qualifications. The proposed rules expand regulations for when an instructor must wear protective gear by adding a requirement for instructors to also wear protective gear when riding a motorcycle to and from training activities. The proposed rules expand regulations for training sites by adding a requirement for ranges to be surrounded by a paved run-off area. The proposed rules expand regulations relating to student admission by adding requirements for schools to inform students verbally or in writing of examination policies and department contact information. The proposed rules expand regulations relating to course completion certificates by requiring the certificates to be issued only to students who pass the required examinations. The proposed rules expand regulations relating to range activities by limiting who is allowed to be on the range and by specifying the activities allowed for range assistants. The proposed rules expand regulations relating to curriculum standards for entry-level courses by adding requirements that the curriculum include a knowledge examination and a riding skills test, and that the curriculum be submitted in conjunction with an instructor preparation course.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do 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, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Transportation Code, Chapter 662, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules

as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51; Texas Transportation Code, Chapters 521 and 662; and Texas Code of Criminal Procedure, Article 45.0511. No other statutes, articles, or codes are affected by the proposed rules.

§98.10. Definitions.

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

(1) Advisory board--The Motorcycle Safety Advisory Board.

(2) Change of ownership--A change in the control of a motorcycle school. The control of a school is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school has been sold or transferred;

(B) in the case of ownership by a partnership or corporation, when more than 50% of the school, or of the owning partnership or corporation, has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school.

(3) Commission--Texas Commission of Licensing and Regulation.

(4) Controlling person--An individual who:

(A) is a sole proprietor;

(B) is a general partner of a partnership;

(C) is a controlling person of a business entity that is a general partner of a partnership;

(D) possesses direct or indirect control of at least 25 percent of the voting securities of a corporation;

(E) is the president, the secretary, or a director of a corporation; or

(F) possesses the authority to set policy or direct the management of a business entity.

(5) Department--Texas Department of Licensing and Regulation.

(6) Entry-level course--A course of instruction in motorcycle operation designed to meet the training requirement to obtain a Class M driver's license or endorsement issued under Texas Transportation Code, Chapter 521. The term includes a course designed for experienced motorcycle riders to meet the training requirement to obtain a Class M driver's license or endorsement, sometimes referred to as an intermediate course.

(7) Incident-- Any instance where any part of a motorcycle, other than the tires or side stand, touches the ground or another object.

(8) Instructor--An individual licensed by the department to teach motorcycle operator training courses in Texas.

(9) Instructor preparation course--A course designed to prepare an individual to provide instruction in motorcycle operation.

(10) ~~[(9)]~~ Motorcycle school--An entity licensed by the department to provide motorcycle operator training courses in Texas.

(11) ~~[(10)]~~ Offer--To do any of the following:

(A) make a written or oral proposal to perform;

(B) contract in writing or orally to perform; or

(C) advertise or imply, in any form through any medium, that a person is available to perform or contract to perform.

(12) ~~[(11)]~~ Person--An individual or entity.

(13) ~~[(12)]~~ Range--The area of a training site where on-cycle training is conducted.

(14) TEEX--The Texas A&M Engineering Extension Service.

(15) ~~[(13)]~~ Training site--A physical location, consisting of a classroom and range, where motorcycle operator training is conducted.

§98.20. Instructor--License Required.

(a) An individual may not offer or provide instruction in motorcycle operation to the public for consideration or teach an instructor preparation course unless the individual:

(1) holds an instructor license issued by the department;

(2) provides the instruction in accordance with a curriculum approved by the department; and

(3) provides the instruction as an employee of, or under contract with, a motorcycle school or TEEX.

(b) An individual enrolled as a student in an instructor preparation course administered by TEEX does not violate this section by participating in activities conducted as part of the instructor preparation course.

§98.21. Instructor--License Eligibility.

(a) To be eligible for an instructor license, an applicant must:

(1) be at least 18 years old;

(2) submit a completed application on a form prescribed by the department;

(3) have successfully completed an instructor preparation course in accordance with §98.22;

(4) have held, continuously for the two years preceding the date of submitting the application, a valid driver's license that entitles the applicant to operate a motorcycle on a public road;

(5) not have been convicted during the preceding three years of:

(A) three or more moving violations described by Texas Transportation Code §542.304, including violations that resulted in an accident; or

(B) two or more moving violations described by Texas Transportation Code §542.304, that resulted in an accident;

(6) be a high school graduate or have obtained a general education development (GED) certificate, certificate of high school equivalency, or other credentials equivalent to a public high school degree;

(7) possess current first aid and adult cardiopulmonary resuscitation (CPR) certification from a nationally recognized provider with training courses that require in-person attendance, provide hands-on skills practice, and meet or exceed the standards of the American Red Cross, the American Heart Association, or the National Highway Traffic Safety Administration; ~~and~~

(8) submit the fee required by §98.80;

(9) undergo and successfully pass a criminal history background check; and

(10) not have been convicted during the preceding seven years of:

(A) Texas Penal Code §49.04, Driving While Intoxicated;

(B) Texas Penal Code §49.045, Driving While Intoxicated with Child Passenger;

(C) Texas Penal Code §49.07, Intoxication Assault; or

(D) Texas Penal Code §49.08, Intoxication Manslaughter.

(b) Out-of-state applicants. The eligibility requirements in subsection (a)(3) and Texas Transportation Code §662.0062(a)(1) can alternatively be met by an applicant who has held, continuously for the previous year, authorization to provide instruction for a department-approved entry-level course, or its equivalent as determined by the department, by submitting to the department any information about the course requested by the department and:

(1) if the applicant is from a state or other jurisdiction that offers a motorcycle instructor license:

(A) an active motorcycle instructor license issued to the applicant by the state or other jurisdiction; and

(B) a document on official letterhead issued by the state or other jurisdiction stating that:

(i) the motorcycle instructor license has been active and in good standing continuously for the previous year; and

(ii) the applicant has taught both the classroom and range portions of the course at least six times; or

(2) if the applicant is from a state or other jurisdiction that does not offer a motorcycle instructor license:

(A) a certificate of completion of the instructor training required to teach the course issued by the administrator of the course; and

(B) a document on official letterhead issued by the administrator of the course stating that:

(i) the applicant's authorization to teach the course has been active and in good standing continuously for the previous year; and

(ii) the applicant has taught both the classroom and range portions of the course at least six times.

§98.22. *Instructor--Preparation Course.*

(a) The instructor preparation course required by §98.21(a)(3) [§98.21(3)] must be a training program on motorcycle operator training and safety instruction approved by the executive director of the department and administered by TEEX [the Texas A&M Engineering Extension Service].

(b) To be eligible to enroll in an instructor preparation course under this section, an individual must:

(1) meet the requirements of §98.21(a)(4) [§98.21(4)], (5), ~~and~~ (6), and (10); and

(2) not have a criminal history that will make the individual ineligible for an instructor license under §98.21(a)(9).

(c) To determine whether an individual meets the requirement of subsection (b)(2), an individual may request a criminal history evaluation letter from the department, as provided by 16 T.A.C. §60.42, Criminal History Evaluation Letters.

§98.23. *Instructor--License Term; Renewal.*

(a) An instructor license is valid for two years after the date of issuance.

(b) Each licensee is responsible for renewing the license before the expiration date. Lack of receipt of a license renewal notice from the department will not excuse failure to file for renewal or late renewal.

(c) To renew a license, an instructor must:

(1) submit a completed renewal application on a department-approved form;

(2) meet the requirements of §98.21(a)(4) [§98.21(4)], (5), ~~and~~ (7), (9), and (10); and

(3) submit the fee required under §98.80.

(d) Section 98.21(a)(10) does not apply to a conviction that occurred prior to September 1, 2021, of a renewal applicant who has continuously held an instructor license since September 1, 2021.

§98.26. *Motorcycle School--License Eligibility.*

To be eligible for a motorcycle school license, an applicant must:

(1) submit a completed application on a form prescribed by the department;

(2) provide a list of all controlling persons of the applicant, each of whom must undergo and successfully pass a criminal history background check;

(3) obtain an insurance policy that meets the requirements of §98.40;

(4) provide a list of all real property that will be used to meet the training site requirements of §98.100 and proof that the applicant owns, or possesses written authorization by the owner to use, each property;

(5) provide a list of motorcycles, if any, that will be available for use by students, including for each motorcycle the year, make, model, and Vehicle Identification Number (VIN);

(6) provide a list of the department-approved courses the applicant intends to offer and proof of ownership of, or authority to offer, each course;

(7) provide a list of instructors employed by, or contracted with, the applicant; and

(8) submit the fee required by §98.80.

§98.70. *Instructor--Responsibilities.*

(a) An instructor must:

(1) notify the department of any change in the instructor's address, phone number, or email address within 15 days from the date of the change;

(2) maintain a valid driver's license that entitles the license holder to operate a motorcycle on a public road;

(3) maintain a driving record that meets the requirements of §98.21(a)(5) [§98.21(5)];

(4) maintain first aid and CPR certification that meets the requirements of §98.21(a)(7) [§98.21(7)];

(5) act immediately to appropriately address the medical needs of any person injured at the training site and summon emergency medical services if necessary;

(6) report each incident to the motorcycle school in a timely manner;

(7) cooperate with all department audits and investigations and provide all requested documents;

(8) before each course, inspect each motorcycle to be used on the range to ensure the motorcycle meets the requirements of §98.102;

(9) ensure that each motorcycle provided by a student meets the insurance requirements of §98.40 before the motorcycle is used on the range;

(10) provide instruction only in compliance with a curriculum approved by the department;

(11) be capable of instructing the entire course and providing technically correct riding demonstrations;

(12) comply with the student-to-instructor ratio requirements in §98.108;

(13) supervise all students and personnel on the range;

(14) wear~~;~~ and ensure all students wear, the protective gear required by §98.108(f) whenever riding a motorcycle to, from, or during rider training activities; ~~[participating in the on-eye portion of any course; and]~~

(15) ensure all students wear the protective gear required by §98.108(f) whenever riding a motorcycle on the range; and

(16) ~~[(45)]~~ deal honestly with members of the public and the department.

(b) An instructor must not:

(1) instruct a student if either the instructor or student exhibits signs of impairment from the use of an alcoholic beverage, controlled substance, drug, or dangerous drug, as defined in Texas Penal Code §1.07; or

(2) complete, issue, or validate a certificate of course completion to a person who has not successfully completed the course.

§98.100. Training Site Requirements.

(a) A motorcycle school must have a training site that includes:

(1) a range that is:

(A) a paved surface, including asphalt, concrete, or another all-weather surface of suitable traction;

(B) large enough to safely accommodate all courses conducted by the motorcycle school;

(C) reasonably free of incline;

(D) secure from vehicular and pedestrian traffic; ~~[and]~~

(E) free of surface hazards and obstacles; and

(F) surrounded by a paved run-off area, free of surface hazards and obstacles, of at least 20 feet from the perimeter of the range;

(2) an appropriate first aid kit and at least one five-pound Class ABC fire extinguisher, or its equivalent, for the range;

(3) a classroom that:

(A) is not located in a private residence;

(B) is large enough to adequately seat all students and instructors;

(C) has an adequate seat and writing surface for each student; and

(D) has adequate audiovisual presentation equipment.

(b) Subsection (a)(3) does not require a classroom to be a physical building and does not prohibit a virtual classroom conducted on-line.

§98.104. Student Admission Requirements.

(a) Entry-level courses are open to any individual who is at least 15 years old on the day the course begins and:

(1) has an unrestricted Class C, or higher, driver license;

(2) has a Class C learner license; or

(3) can present the proper driver education form verifying successful completion of the classroom portion phase of driver education.

(b) Non-entry-level courses are open to any individual who holds a Class M driver's license or an equivalent out-of-state license.

(c) To be eligible for student admission to any course, an individual younger than 18 years of age must provide the motorcycle school with written consent, signed by the individual's [a] parent or legal guardian [other person listed in Texas Family Code §32.001(a)], for the individual to participate as a student in the course and to receive medical treatment for any injury that may occur at the motorcycle school. The signature of the parent or legal guardian on the written consent must be notarized or provided in person at the training site.

(d) Prior to admitting an individual to an entry-level course, a motorcycle school must inform the individual verbally or in writing of:

(1) the school's policy regarding how many attempts the school allows students to make to pass the knowledge examination and the riding skills test required for the course; and

(2) the requirement that a student whose riding performance creates an unmanageable danger on the range, as determined by the instructor, must be removed from the course and is not entitled to additional attempts to pass the riding skills test.

(e) Prior to admitting an individual to any course, a motorcycle school must inform the individual in writing of the department's name, mailing address, telephone number, and website address for the purpose of directing complaints to the department.

§98.106. Verification of Course Completion.

(a) A motorcycle school must issue a department-approved course completion certificate to a student who has successfully completed an entry-level course. The certificate must be signed by an instructor who taught the course or an appointed representative of the school.

(b) A motorcycle school must issue a department-approved course completion certificate that is restricted to the operation of a

three-wheeled motorcycle if the entry-level course successfully completed by a student is specific to the operation of a three-wheeled motorcycle.

(c) A motorcycle school may issue a duplicate course completion certificate to a student for a lost certificate for up to three calendar years from the date the course was completed. The duplicate certificate must bear the same certificate number and course completion date as the original certificate.

(d) A course completion certificate for an entry-level course may only be issued to a student who has successfully completed the knowledge examination and the riding skills test required by the approved curriculum for the course. A motorcycle school may allow a student to make multiple attempts to pass the knowledge examination or the riding skills test, but any student whose riding performance creates an unmanageable danger on the range, as determined by the instructor, must be removed from the course and is not entitled to additional attempts to pass the riding skills test.

§98.108. *Course Requirements.*

(a) All courses must be conducted in accordance with a department-approved curriculum.

(b) The student-to-instructor ratio for classroom instruction of a course may not exceed 36 students per instructor.

(c) The student-to-instructor ratio for ~~on-eye~~ instruction may not exceed ~~eight~~ ~~six~~ students per instructor, ~~or a more restrictive ratio imposed by the approved curriculum. [until the instructor has taught seven courses. Once the instructor has taught seven courses, the instructor may teach up to eight students alone.]~~

~~[(d) There must not be more than 12 students on a range during any phase of range instruction.]~~

(d) ~~[(e)]~~ For two-wheeled motorcycle courses, a [A] separate motorcycle must be available for each student ~~[during range instruction]. For three-wheeled motorcycle courses, no more than two students may share a motorcycle.~~

(e) ~~[(f)]~~ All students and instructors must wear protective gear when participating in the on-cycle portion of the course. The minimum protective gear includes:

- (1) a motorcycle helmet that meets the standards of the U.S. Department of Transportation;
- (2) eye protection;
- (3) over-the-ankle, sturdy footwear;
- (4) a long-sleeved shirt or jacket;
- (5) non-flare pants that cover the entire leg and are made from a material that is at least as sturdy as denim; and
- (6) full-fingered gloves.

(f) No person shall be on the range during any phase of range instruction except:

- (1) instructors who are providing instruction, assistance, or evaluation;
- (2) students who are enrolled in the course being conducted;
- (3) interpreters or other assistants providing services to accommodate a disability or other condition required by law to be accommodated; or
- (4) range assistants who are:

(A) enrolled in an instructor preparation course described in §98.22; or

(B) all of the following:

- (i) at least 16 years old;
- (ii) employed by or contracted with the motorcycle school; and
- (iii) trained by the motorcycle school to provide non-instructional support.

(g) A range assistant may not provide any form of instruction or evaluation of students, but may provide non-instructional support, limited to:

- (1) moving motorcycles;
- (2) setting up, removing, or operating classroom equipment and materials;
- (3) setting or removing cones or other objects for range exercises;
- (4) performing on-site motorcycle maintenance; and
- (5) conducting demonstrations of riding exercises under the supervision of an instructor, if allowed by the approved curriculum.

§98.110. *Approval of Course Curriculum.*

(a) To obtain department approval of a course curriculum, a person must submit to the department:

- (1) a completed application on a form prescribed by the department; and
- (2) the curriculum for the course and, if requested by the department, course materials to be used by students and instructors in the classroom and on the range.

(b) If the curriculum meets the minimum standards established by this chapter, the department will approve the course. Notification of approval or denial will be sent to the applicant ~~[motoreyele school]~~.

§98.112. *Curriculum Standards--Entry-Level Course.*

The ~~[minimum]~~ curriculum ~~[standards]~~ for an entry-level course must ~~[are]~~

(1) be determined by the department to meet the Model National Standards for Entry-Level Motorcycle Rider Training (August 2011) distributed by the U.S. Department of Transportation, National Highway Traffic Safety Administration, which the department adopts by reference;

(2) include a knowledge examination that is designed to ensure students comprehend important concepts covered in the curriculum;

(3) include a riding skills test that is designed to ensure students can perform the riding skills covered in the curriculum;

(4) be consistent with this chapter and Texas Transportation Code, Chapter 662; and

(5) be submitted in conjunction with an instructor preparation course that meets the requirements of §98.116.

§98.114. *Curriculum Standards--Non-Entry-Level Course.*

The ~~[minimum]~~ curriculum ~~[standards]~~ for a course of instruction in motorcycle operation that is not an entry-level course must ~~[are]~~ :

- (1) ~~[the course must]~~ provide a benefit to public safety; ~~[and]~~

(2) [the course must] be designed to provide training in a safe and prudent manner; and

(3) be consistent with this chapter and Texas Transportation Code, Chapter 662.

§98.116. Curriculum Standards--Instructor Preparation Course.

The curriculum for an instructor preparation course must:

(1) prepare an individual to competently teach all components of an entry-level course approved by the department; and

(2) be consistent with this chapter and Texas Transportation Code, Chapter 662.

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

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TRD-202101940

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 463-3671



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 103. HEALTH AND SAFETY

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SAFE SCHOOLS

19 TAC §103.1201, §103.1203

The Texas Education Agency (TEA) proposes amendments to §103.1201 and §103.1203, concerning disciplinary alternative education programs (DAEPs). The proposed amendments would align the rules with statute, provide clarification on procedures for administering pre- and post-assessments to students placed in DAEPs for a period of 90 school days or longer, and specify how to obtain an accommodated version of an assessment from TEA.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 103.1201 defines minimum requirements a school district must meet when implementing a DAEP as required by Texas Education Code (TEC), §37.008.

The proposed amendment to §103.1201(b)(1) would update the list of student groups that are required to have identified objectives included in a district's board-approved district improvement plan and the improvement plans for each campus required by TEC, §11.251 and §11.252.

Section 103.1201(f)(1) would be updated to remove references to minimum, recommended, or distinguished achievement-advanced graduation plans. These plans are no longer offered. The amended language would instead specify that a student's high school personal graduation plan required by TEC, §28.02121, may not be altered when the student is assigned to a DAEP.

The proposed amendment to §103.1201(f)(2) would revise the minimum length of operational time each day required by DAEPs in order to meet the requirements set forth in TEC, §25.081.

Section 103.1201(k) would be updated to reflect the addition of TEC, §37.023, regarding transition procedures for a student exiting a DAEP and returning to the student's locally assigned campus.

Section 103.1203 defines rules for administering pre- and post-assessments to students placed in DAEPs for a period of 90 school days or longer as required by TEC, §37.0082.

The proposed amendment to §103.1203(a) would direct school districts to contact TEA to obtain an accommodated assessment based on the particular needs of a student placed in a DAEP for a period of 90 school days or longer necessary to meet requirements set forth in TEC, §37.0082.

Section 103.1203(d) would require local school district policy and procedures for administering pre- and post-assessments to address providing appropriate accommodations as needed for a student placed in a DAEP for a period of 90 school days or longer.

FISCAL IMPACT: Melody Parrish, deputy commissioner for technology, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by changing the daily time required for instruction in a DAEP from 7 to 10 hours to 240 minutes each day in §103.1201(f)(2). The proposed rulemaking would expand an existing regulation by requiring in §103.1203(d) that local school district policy and procedures for administering pre- and post-assessments address providing appropriate accommodations as needed for a student placed in a DAEP for a period of 90 school days or longer.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; would not increase or decrease the number of individuals subject to its ap-

plicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Parrish has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is based on current law and providing school districts with clarifications on current graduation plans and minimum minutes of operation. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 28, 2021, and ends June 28, 2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 28, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §37.008(a-1), which requires the agency to adopt minimum standards for the operation of disciplinary alternative education programs (DAEPs); and TEC, §37.0082(c), which requires the agency to adopt rules necessary to implement the assessment of academic growth of students placed in DAEPs for a period of 90 school days or longer.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §37.008(a-1) and §37.0082(c).

§103.1201. Standards for the Operation of School District Disciplinary Alternative Education Programs.

(a) A disciplinary alternative education program (DAEP) established in conformance with the Texas Education Code (TEC), §37.008, and this section is defined as an educational and self-discipline alternative instructional program, adopted by local policy, for students in elementary through high school grades who are removed from their regular classes for mandatory or discretionary disciplinary reasons and placed in a DAEP.

(b) Each school district participating in a shared services arrangement (SSA) for DAEP services shall be responsible for ensuring that the board-approved district improvement plan and the improvement plans for each campus required by the TEC, §11.251 and §11.252, include the performance of the DAEP student group for the respective district. The identified objectives for the improvement plans shall include:

(1) student groups served, including overrepresentation of students from economically disadvantaged families, with ethnic and racial representations, ~~and~~ with a disability who receive special education services, or receiving ~~and~~ limited English proficiency/English learner ~~English proficiency~~ services;

(2) attendance rates;

(3) pre- and post-assessment results;

(4) dropout rates;

(5) graduation rates; and

(6) recidivism rates.

(c) A DAEP may be located on-campus or off-campus in adherence with requirements specified in §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook). For reporting purposes, the DAEP shall use the county-district-campus number of the student's locally assigned campus (the campus the student would be attending if the student was not attending the DAEP).

(d) An individual school district or an SSA may contract with third parties for DAEP services. The district must require and ensure compliance with district responsibilities that are transferred to the third-party provider.

(e) The campus of accountability for student performance must be the student's locally assigned campus, including when the individual school district or SSA contracts with a third party for DAEP services.

(f) Each school district shall provide an academic and self-discipline program that leads to graduation and includes instruction in each student's currently enrolled foundation curriculum necessary to meet the student's individual graduation plan, including special education services.

(1) A student's high school personal [four-year] graduation plan required under TEC, §28.02121, [(minimum, recommended, or distinguished achievement—advanced)] may not be altered when the student is assigned to a DAEP. A student must be offered an opportunity to complete a foundation curriculum course in which the student was enrolled at the time of removal before the beginning of the next school year, including correspondence or distance learning opportunities or summer school. A district may not charge for a course required under this section.

(2) The school day for a DAEP shall be at least 240 minutes [seven hours but no more than ten hours] in length each day, including intermissions and recesses as required under the TEC, §25.081 [§25.082(a)].

(3) Notwithstanding the TEC, §37.008(a)(3), summer programs provided by the district may serve students assigned to a DAEP in conjunction with other students, as determined by local policy.

(g) A DAEP program serving a student with a disability who receives special education services shall provide educational services that will support the student in meeting the goals identified in the individualized education program ~~[(IEP)]~~ established by a duly-constituted admission, review, and dismissal ~~[(ARD)]~~ committee, in accordance with the TEC, §37.004, and federal requirements.

(h) Each school district is responsible for the safety and supervision of the students assigned to the DAEP; however, the immunity from the liability established in the TEC, §22.0511, shall not be impacted.

(1) The certified teacher-to-student ratio in a DAEP shall be one teacher for each 15 students in elementary through high school grades. Elementary grade students assigned to the DAEP shall be separated from secondary grade students assigned to the DAEP. The designation of elementary and secondary will be determined by adopted local policy.

(2) The DAEP staff shall be prepared and trained to respond to health issues and emergencies.

(3) Students in the DAEP shall be separated from students in a juvenile justice alternative education program [(JJAEP)] and students who are not assigned to the DAEP.

(4) Each district shall establish a board-approved policy for discipline and intervention measures to prevent and intervene against unsafe behavior and include disciplinary actions that do not jeopardize students' physical health and safety, harm emotional well-being, or discourage physical activity.

(i) Staff at each DAEP shall participate in training programs on education, behavior management, and safety procedures that focus on positive and proactive behavior management strategies. The training programs must also target prevention and intervention that include:

(1) training on the education and discipline of students with disabilities who receive special education services;

(2) instruction in social skills and problem-solving skills that addresses diversity, dating violence, anger management, and conflict resolution to teach students how to interact with teachers, family, peers, authority figures, and the general public; and

(3) annual training on established procedures for reporting abuse, neglect, or exploitation of students.

(j) Procedures for each DAEP shall be developed and implemented for newly-entering students and their parents or guardians on the expectations of the DAEP, including written contracts between students, parents or guardians, and the DAEP that formalize expectations and establish the students' individual plans for success.

(k) The transition procedures established for a student who is exiting a DAEP and returning to the student's locally assigned campus shall be implemented as required by TEC, §37.023. [and updated annually as needed. The transition procedures shall include:]

[(1) an established timeline for the student's transition from the DAEP to the student's locally assigned campus; and]

[(2) written and oral communication from the DAEP staff to the locally assigned campus during the student's assignment to the DAEP, including the student's educational performance and tasks completed.]

§103.1203. Assessment of Academic Growth of Students in Disciplinary Alternative Education Programs.

(a) Each school district shall be responsible for administering a pre- and post-assessment for each student assigned to the district's disciplinary alternative education program (DAEP) for a period of 90 school days or longer as required by the Texas Education Code (TEC), §37.0082. Released state assessments for reading and mathematics for the appropriate grade may be used. A school district may apply for approval of an assessment that includes the Texas Essential Knowledge and Skills [(TEKS)] for reading and mathematics for the student's assigned grade. The commissioner of education will publish on the Texas Education Agency (TEA) website a list of assessments approved for use in each school year. A school district may contact TEA to obtain accommodated versions of particular assessments.

(b) The grade level of an assessment shall be based upon the academic grade completed prior to the student being assigned to a DAEP if placement occurs in the fall or first semester of the academic school year. If placement occurs in the spring or second semester of the academic school year, the student shall be administered an assessment based on the current grade level.

(c) Each school district shall provide an academic report to the student's locally assigned campus, which shall include the pre- and post-assessment results of the student's basic skills in reading and

mathematics, within 10 school [ten] days of the student completing the post-assessment.

(d) Procedures for administering the pre- and post-assessment, including appropriate accommodations as needed, shall be developed and implemented in accordance with local school district policy.

(e) A student in the district's DAEP must also be assessed under the requirements of the TEC, Chapter 39.

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 17, 2021.

TRD-202101953

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.8

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.8, Scope of Practice.

The proposed amendments implement changes adopted by the Appraiser Qualifications Board (AQB) which became effective on January 1, 2021. The change was based on federal law which increased the threshold for residential real estate transactions requiring an appraisal from \$250,000 to \$400,000. The proposed amendments increase the transaction threshold for licensed residential appraisers from \$250,000 to \$400,000 to align TALCB rules with AQB requirements and federal law.

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

Ms. Buchholtz has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be consistency with AQB requirements and federal law.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules 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;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/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 §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.8. Scope of Practice.

(a) License holders are bound by the USPAP edition in effect at the time of the appraisal.

(b) Certified General Real Estate Appraisers may appraise all types of real property without regard to transaction value or complexity.

(c) Certified Residential Real Estate Appraisers:

- (1) may appraise one-to-four residential units without regard to transaction value or complexity;
- (2) may appraise vacant or unimproved land for which the highest and best use is for one-to-four family purposes;
- (3) may not appraise subdivisions; and
- (4) may associate with a state certified general real estate appraiser, who shall sign the appraisal report, to appraise non-residential properties.

(d) State Licensed Real Estate Appraisers:

- (1) may appraise non-complex one-to-four residential units having a transaction value less than \$1 million and complex one-to-four residential units having a transaction value less than \$400,000 [\$250,000];
- (2) may appraise vacant or unimproved land for which the highest and best use is for one to four unit residential purposes;
- (3) may not appraise subdivisions; and

(4) may associate with a state certified general real estate appraiser, who shall sign the appraisal report, to appraise non-residential properties.

(e) Appraiser Trainees may appraise those properties, under the active, personal and diligent supervision of their sponsoring appraiser, which the sponsoring appraiser is permitted to appraise.

(f) If an appraiser or appraiser trainee is a person with a disability (as defined in the Americans with Disabilities Act or regulations promulgated thereunder), an unlicensed assistant may perform certain services normally requiring a license for or on behalf of the appraiser or appraiser trainee, provided that:

- (1) the services performed by the assistant do not include appraisal analysis;
- (2) the assistant only provides such services as would constitute a reasonable accommodation;
- (3) the assistant is under the direct control of the appraiser or appraiser trainee;
- (4) the appraiser or appraiser trainee is as close in physical proximity as is practical to the activity;
- (5) the assistant is not represented as being or having the authority to act as an appraiser or appraiser trainee; and
- (6) if the assistant provides significant assistance, the appraisal report includes the name of the assistant.

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 17, 2021.

TRD-202101957

Chelsea Buchholtz

Commissioner

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 936-3652



22 TAC §153.21

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.21, concerning Appraiser Trainees and Supervisory Appraisers.

The proposed amendments clarify rules related to qualification requirements for supervisory appraisers as adopted by the Appraiser Qualifications Board (AQB). To be eligible to supervise an appraiser trainee, a certified appraiser must not have had practice-interrupting discipline in the prior three years. The proposed amendments clarify that this only applies to disciplinary actions. Administrative actions do not prohibit an appraiser from acting as a supervisor.

Chelsea Buchholtz, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro-businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the pro-

posed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Buchholtz has also determined that for each year of the first five years the proposed amendments and rules are in effect, the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with AQB guidelines and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules 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;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

§153.21. Appraiser Trainees and Supervisory Appraisers.

(a) Supervision of appraiser trainees required.

(1) An appraiser trainee may perform appraisals or appraiser services only under the active, personal and diligent direction and supervision of a supervisory appraiser.

(2) An appraiser trainee may be supervised by more than one supervisory appraiser.

(3) Number of Appraiser Trainees Supervised.

(A) Supervisory appraisers may supervise no more than three appraiser trainees at one time unless the requirements in subsection (a)(3)(B) of this section, are met;

(B) Supervisory appraisers may supervise up to five appraiser trainees at one time if:

(i) the supervisory appraiser has been licensed as a certified appraiser for more than five years; and

(ii) all of the supervisory appraiser's appraiser trainees must submit requests for the Board to review the appraiser trainee's work product as specified in §153.22 of this title (relating to Voluntary Appraiser Trainee Experience Reviews), or satisfy the required progress monitoring as permitted in §153.16 of this title (relating to License Reinstatement).

(4) A supervisory appraiser may be added during the term of an appraiser trainee's license if:

(A) The supervisory appraiser and appraiser trainee have provided proof to the Board of completion of an approved Appraiser Trainee/Supervisory Appraiser course;

(B) an application to supervise has been received and approved by the Board; and

(C) the applicable fee has been paid.

(5) A licensed appraiser trainee who signs an appraisal report must include his or her license number and the word "Trainee" as part of the appraiser trainee's signature in the report.

(b) Eligibility requirements for appraiser trainee supervision.

(1) To be eligible to supervise an appraiser trainee, a certified appraiser must:

(A) be in good standing and not have had, within the last three years, disciplinary action affecting the certified appraiser's legal eligibility to engage in appraisal practice in any state including suspension, revocation, and surrender in lieu of discipline [an appraiser certification canceled, surrendered in lieu of discipline, suspended, or revoked in any state for a substantive cause related to appraisal practice];

(B) complete an approved Appraiser Trainee/Supervisory Appraiser course; and

(C) submit proof of course completion to the Board.

(2) Before supervising an appraiser trainee, the supervisory appraiser must notify the appraiser trainee in writing of any disciplinary action taken against the supervisory appraiser within the last three years that did not affect the supervisory appraiser's eligibility to engage in appraisal practice.

(3) An application to supervise must be received and approved by the Board before supervision begins.

(c) - (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 17, 2021.

TRD-202101958

Chelsea Buchholtz

Commissioner

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 936-3652



PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 271. EXAMINATIONS

22 TAC §271.2

The Texas Optometry Board proposes amendments to §271.2, Applications. Specifically, the Texas Optometry Board proposes an amendment to the deadline for the completed application and examination fee requirements. The examination fee remains the same and unchanged. The Texas Optometry Board updated its policies regarding the availability of examinations for students and the proposed rule changes are simple changes that go along with the update to the examination schedule. The amendment

is necessary to protect the health, safety, and welfare of the residents of this state. The amendment applies to all prospective licensees and it is predicted that there will be no additional economic costs subject to the amendment.

Kelly Parker, Executive Director of the Texas Optometry Board, estimates that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment. Ms. Parker has also determined that for each of the first five years the amendment is in effect, the public benefit anticipated is that prospective licensees will have additional examination dates for licensure.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendment. Since the agency has determined that the proposed amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental amendment" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed amendment will be in effect, it is anticipated that the proposed amendment will not create or eliminate a government program. Further, implementation of the proposed amendment will not require the creation of new employee position or the elimination of an existing employee position; implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency; and the proposed amendments will not require an increase or decrease in fees paid to the agency. The proposed amendment does not create a new regulation but does amend a current rule for the purpose of updating internal processes. The proposed amendment does not change the number of individuals' subject to the amendment, and the effect on the state's economy is neutral.

PUBLIC COMMENTS

Comments on the proposed amendment may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151.

No other sections are affected by the amendments.

§271.2. Applications.

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

(g) The completed application and examination fee must be filed with the executive director by the first day of the month prior to the exam. [not later than 45 days prior to the date of the examination.]

(h) The fee for taking the examination shall be \$150. The fee is non-refundable and non-transferable. [The fee must be submitted in the form of a money order or cashier's check.]

(i) - (k) (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 11, 2021.

TRD-202101849

Kelly Parker
Executive Director
Texas Optometry Board

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 305-8502



CHAPTER 275. CONTINUING EDUCATION

22 TAC §275.3

The Texas Optometry Board proposes new §275.3 Continuing Education Tracking System, which will require licensees to submit continuing education certificates digitally to a digital continuing education tracking platform. This new rule creates clear requirements for continuing education reporting as of January 1, 2022.

Kelly Parker, Executive Director, has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated is continuing education materials will be directly reported to the continuing education system creating efficiencies in customer service while also providing many benefits for licensees. The continuing education system will also allow the Board to audit licensees.

It is anticipated that there will be no economic costs for optometrists and therapeutic optometrists. The new rule is necessary to carry out the duties of the regulatory agency and ensure the licensees are maintaining competency along with protecting the health, safety, and welfare of the residents of this state.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code

§2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed amendments will not require the creation of a new employee position or the elimination of an existing employee position; implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to the agency; and implementation of the proposed amendments will not require an increase or decrease in fees paid to the agency.

The proposed amendments do not create a new regulation but do amend current rules. The proposed amendments do not change the number of individuals subject to the rule. There will be no impact on the state's economy as it is predicted to be neutral.

PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. Section §351.308 requires each licensee to complete continuing education and report proof of completion to the agency for the renewal of licensure.

Except as described herein, the proposed amended section affects no other code, article, or statute.

§275.3. Continuing Education Tracking System.

(a) Effective January 1, 2022, each licensee shall submit proof of completion for each continuing education course taken to the continuing education tracking system.

(b) Each licensee is responsible for reviewing the information contained in the tracking system to ensure its accuracy.

(c) As of January 1, 2022, Board staff will verify completion of continuing education renewal requirements through the tracking system.

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 11, 2021.

TRD-202101847

Kelly Parker

Executive Director

Texas Optometry Board

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 305-8502

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 520. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM

22 TAC §520.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §520.6, concerning Allocations.

Background, Justification and Summary

The amendment will delete the reference to the Fifth Year Accounting Student Scholarship Advisory Committee. During the last session of the legislature the Fifth Year Accounting Student Scholarship Advisory Committee provision in the Texas Public Accountancy Act was repealed.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will eliminate the confusion of a rule that recognizes a committee that no longer exists.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on June 28, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§520.6. Allocations.

(a) The board~~[, with the assistance of the advisory committee,]~~ develops a formula for allocating funds to participating institutions in a way that fulfills the purpose of the program.

(b) Unless otherwise indicated, institutions shall have until a date specified by the board through a policy memo addressed to the program officer at the institution to encumber all funds allocated to them. If unencumbered by that specific date, the unencumbered funds will be allocated by the executive director to other institutions based upon need and a history of utilization.

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 13, 2021.

TRD-202101922

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 305-7842



22 TAC §520.9

The Texas State Board of Public Accountancy (Board) proposes the repeal of §520.9, concerning Advisory Committee.

Background, Justification and Summary

The amendment will delete the provision for the Fifth Year Accounting Student Scholarship Advisory Committee. During the last session of the legislature the Fifth Year Accounting Student Scholarship Advisory Committee provision in the Texas Public Accountancy Act was repealed.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the repeal.

Public Benefit

The adoption of the proposed amendment will eliminate the confusion of a rule that recognizes a committee that no longer exists.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed repeal will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the repeal does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the repeal is in effect, the proposed repeal: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed repeal's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed repeal.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the repeal is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505

E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on June 28, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses. If the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the repeal, describe and estimate the economic impact of the repeal on small businesses, offer alternative methods of achieving the purpose of the repeal; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed repeal is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§520.9. *Advisory Committee.*

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 13, 2021.

TRD-202101923

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 305-7842



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 353. SUBSTANCE ABUSE TREATMENT PROGRAM

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

37 TAC §§353.101 - 353.107

The Texas Juvenile Justice Department (TJJD) proposes to repeal §§353.101 - 353.107, relating to Substance Abuse Treatment Programs.

SECTION-BY-SECTION SUMMARY

The repeal of §353.101 will allow for the content to be revised and republished within new §353.101.

The repeal of §353.102 will allow for the content to be revised and republished within new §353.102.

The repeal of §353.103 will allow for the content to be revised and republished within new §353.103.

The repeal of §353.104 will allow for the content to be revised and republished within new §353.104.

Sections 353.105 and 353.106 will be repealed and not republished.

The repeal of §353.107 will allow for the content to be revised and republished within new §353.105.

FISCAL NOTE

Emily Anderson, Chief Financial Officer, has determined that for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the repeals, under the assumption the repealed chapter will be readopted in modified form.

PUBLIC BENEFIT/COSTS

Lou Serrano, Senior Director of Probation and Community Services, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be that juvenile justice facilities and programs providing substance use disorder treatment to juveniles will be required to provide those services in a manner consistent with other substance use disorder treatment programs in this state and will be subject to state oversight.

Ms. Anderson has also determined that, assuming the repealed chapter will be readopted in modified form, there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by the repeal of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repealed sections are in effect, the sections will have the following impacts:

- (1) The repealed sections do not create or eliminate a government program.
- (2) The repealed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The repealed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The repealed sections do not impact fees paid to TJJD.
- (5) The repealed sections do not create a new regulation.
- (6) The repealed sections do not expand, limit, or repeal an existing regulation.
- (7) The repealed sections do not increase or decrease the number of individuals subject to the sections' applicability.
- (8) The repealed sections will not positively or adversely affect the state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or email to policy.proposals@tjtd.texas.gov.

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires TJJJ to adopt rules that provide minimum standards for the operation of substance abuse facilities that are juvenile justice facilities or juvenile justice programs, as defined by §261.405, Family Code.

No other statute, code, or article is affected by this proposal.

§353.101. *Definitions.*

§353.102. *Purpose.*

§353.103. *Applicability.*

§353.104. *Program Approval and Registration.*

§353.105. *Change in Status.*

§353.106. *Inspection.*

§353.107. *Waiver or Variance to Standards.*

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 18, 2021.

TRD-202101970

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 490-7278



SUBCHAPTER B. STANDARD OF CARE APPLICABLE TO ALL PROVIDERS

37 TAC §§353.201 - 353.214, 353.216 - 353.218

The Texas Juvenile Justice Department (TJJJ) proposes to repeal Texas Administrative Code Chapter 353, Subchapter B, which includes §§353.201 - 353.214 and 353.216 - 353.218, relating to Substance Abuse Treatment Programs.

SECTION-BY-SECTION SUMMARY

The repeal of §353.201 will allow for the content to be revised and republished within new §353.201.

The repeal of §353.202 will allow for the content to be revised and republished within new §353.202.

Sections 353.203, 353.204, 353.205, 353.206, 353.207, 353.208, and 353.209 will be repealed and not republished.

The repeal of §353.210 will allow for the content to be revised and republished within new §353.302.

The repeal of §353.211 will allow for the content to be revised and republished within new §353.304.

Sections 353.212 and 353.213 will be repealed and not republished.

The repeal of §353.214 will allow for the content to be revised and republished within new §353.204.

The repeal of §353.216 will allow for the content to be revised and republished within new §353.204.

Sections 353.217 and 353.218 will be repealed and not republished.

FISCAL NOTE

Emily Anderson, Chief Financial Officer, has determined that for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the repeals, under the assumption the repealed chapter will be readopted in modified form.

PUBLIC BENEFIT/COSTS

Lou Serrano, Senior Director of Probation and Community Services, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be that juvenile justice facilities and programs providing substance use disorder treatment to juveniles will be required to provide those services in a manner consistent with other substance use disorder treatment programs in this state and will be subject to state oversight.

Ms. Anderson has also determined that, assuming the repealed chapter will be readopted in modified form, there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by the repeal of these sections.

GOVERNMENT GROWTH IMPACT

TJJJ has determined that, during the first five years the repealed sections are in effect, the sections will have the following impacts:

- (1) The repealed sections do not create or eliminate a government program.
- (2) The repealed sections do not require the creation or elimination of employee positions at TJJJ.
- (3) The repealed sections do not require an increase or decrease in future legislative appropriations to TJJJ.
- (4) The repealed sections do not impact fees paid to TJJJ.
- (5) The repealed sections do not create a new regulation.
- (6) The repealed sections do not expand, limit, or repeal an existing regulation.
- (7) The repealed sections do not increase or decrease the number of individuals subject to the sections' applicability.
- (8) The repealed sections will not positively or adversely affect the state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires TJJJ to adopt rules that provide minimum standards for the operation of substance abuse facilities that are juvenile justice facilities or juvenile justice programs, as defined by §261.405, Family Code.

No other statute, code, or article is affected by this proposal.

§353.201. *General Standard.*

§353.202. *Scope of Practice.*

§353.203. *Competence and Due Care.*

§353.204. *Appropriate Services.*

- §353.205. *Accuracy.*
- §353.206. *Documentation.*
- §353.207. *Discrimination.*
- §353.208. *Access to Services.*
- §353.209. *Location.*
- §353.210. *Confidentiality.*
- §353.211. *Environment.*
- §353.212. *Communications.*
- §353.213. *Exploitation.*
- §353.214. *Duty to Report.*
- §353.216. *Ethics.*
- §353.217. *Specific Acts Prohibited.*
- §353.218. *Standards of Conduct.*

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 18, 2021.

TRD-202101972

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 490-7278



SUBCHAPTER E. SUBSTANCE ABUSE PROGRAM REQUIREMENTS

37 TAC §§353.502 – 353.504, 353.507, 353.508

The Texas Juvenile Justice Department (TJJD) proposes to repeal Texas Administrative Code Chapter 353, Subchapter E, which includes §§353.502 - 353.504, 353.507, and 353.508, relating to Substance Abuse Treatment Programs.

SECTION-BY-SECTION SUMMARY

The repeal of §353.502 will allow for the content to be revised and republished within new §353.305.

Sections 353.503 and 353.504 will be repealed and not republished.

The repeal of §353.507 will allow for the content to be revised and republished within new §353.507.

The repeal of §353.508 will allow for the content to be revised and republished within new §353.302.

FISCAL NOTE

Emily Anderson, Chief Financial Officer, has determined that for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the repeals, under the assumption the repealed chapter will be readopted in modified form.

PUBLIC BENEFIT/COSTS

Lou Serrano, Senior Director of Probation and Community Services, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be that juvenile justice facilities and programs providing substance use disorder treatment

to juveniles will be required to provide those services in a manner consistent with other substance use disorder treatment programs in this state and will be subject to state oversight.

Ms. Anderson has also determined that, assuming the repealed chapter will be readopted in modified form, there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by the repeal of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repealed sections are in effect, the sections will have the following impacts:

- (1) The repealed sections do not create or eliminate a government program.
- (2) The repealed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The repealed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The repealed sections do not impact fees paid to TJJD.
- (5) The repealed sections do not create a new regulation.
- (6) The repealed sections do not expand, limit, or repeal an existing regulation.
- (7) The repealed sections do not increase or decrease the number of individuals subject to the sections' applicability.
- (8) The repealed sections will not positively or adversely affect the state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires TJJD to adopt rules that provide minimum standards for the operation of substance abuse facilities that are juvenile justice facilities or juvenile justice programs, as defined by §261.405, Family Code.

No other statute, code, or article is affected by this proposal.

§353.502. *Operational Plan, Policies, and Procedures.*

§353.503. *Reporting Measures.*

§353.504. *Quality Management.*

§353.507. *General Documentation Requirements.*

§353.508. *Client Records.*

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

Filed with the Office of the Secretary of State on May 18, 2021.

TRD-202101974

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 490-7278

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SUBCHAPTER F. PERSONNEL PRACTICES AND DEVELOPMENT

37 TAC §§353.601 - 353.603

The Texas Juvenile Justice Department (TJJD) proposes to repeal Texas Administrative Code Chapter 353, Subchapter F, which includes §§353.601 - 353.603, relating to Substance Abuse Treatment Programs.

SECTION-BY-SECTION SUMMARY

The repeal of §353.601 will allow for the content to be revised and republished within new §353.203 and §353.205.

Section 353.602 and §353.603 will be repealed and not republished.

FISCAL NOTE

Emily Anderson, Chief Financial Officer, has determined that for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the repeals, under the assumption the repealed chapter will be readopted in modified form.

PUBLIC BENEFIT/COSTS

Lou Serrano, Senior Director of Probation and Community Services, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be that juvenile justice facilities and programs providing substance use disorder treatment to juveniles will be required to provide those services in a manner consistent with other substance use disorder treatment programs in this state and will be subject to state oversight.

Ms. Anderson has also determined that, assuming the repealed chapter will be readopted in modified form, there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by the repeal of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repealed sections are in effect, the sections will have the following impacts:

- (1) The repealed sections do not create or eliminate a government program.
- (2) The repealed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The repealed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The repealed sections do not impact fees paid to TJJD.
- (5) The repealed sections do not create a new regulation.
- (6) The repealed sections do not expand, limit, or repeal an existing regulation.
- (7) The repealed sections do not increase or decrease the number of individuals subject to the sections' applicability.
- (8) The repealed sections will not positively or adversely affect the state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires TJJD to adopt rules that provide minimum standards for the operation of substance abuse facilities that are juvenile justice facilities or juvenile justice programs, as defined by §261.405, Family Code.

No other statute, code, or article is affected by this proposal.

§353.601. *Hiring Practices.*

§353.602. *Students and Volunteers.*

§353.603. *Training.*

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 18, 2021.

TRD-202101975

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 490-7278

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SUBCHAPTER G. CLIENT RIGHTS

37 TAC §353.701, §353.704

The Texas Juvenile Justice Department (TJJD) proposes to repeal Texas Administrative Code Chapter 353, Subchapter G, which includes §353.701 and §353.704, relating to Substance Abuse Treatment Programs.

SECTION-BY-SECTION SUMMARY

The repeal of §353.701 will allow for the content to be revised and republished within new §353.301.

Section 353.704 will be repealed and not republished.

FISCAL NOTE

Emily Anderson, Chief Financial Officer, has determined that for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the repeals, under the assumption the repealed chapter will be readopted in modified form.

PUBLIC BENEFIT/COSTS

Lou Serrano, Senior Director of Probation and Community Services, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be that juvenile justice facilities and programs providing substance use disorder treatment to juveniles will be required to provide those services in a manner consistent with other substance use disorder treatment programs in this state and will be subject to state oversight.

Ms. Anderson has also determined that, assuming the repealed chapter will be readopted in modified form, there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by the repeal of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repealed sections are in effect, the sections will have the following impacts:

- (1) The repealed sections do not create or eliminate a government program.
- (2) The repealed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The repealed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The repealed sections do not impact fees paid to TJJD.
- (5) The repealed sections do not create a new regulation.
- (6) The repealed sections do not expand, limit, or repeal an existing regulation.
- (7) The repealed sections do not increase or decrease the number of individuals subject to the sections' applicability.
- (8) The repealed sections will not positively or adversely affect the state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires TJJD to adopt rules that provide minimum standards for the operation of substance abuse facilities that are juvenile justice facilities or juvenile justice programs, as defined by §261.405, Family Code.

No other statute, code, or article is affected by this proposal.

§353.701. *Client Bill of Rights.*

§353.704. *Program Rules.*

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 18, 2021.

TRD-202101976

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 490-7278



SUBCHAPTER H. SCREENING AND ASSESSMENT

37 TAC §§353.801 - 353.805

The Texas Juvenile Justice Department (TJJD) proposes to repeal Texas Administrative Code Chapter 353, Subchapter H, which includes §§353.801 - 353.805, relating to Substance Abuse Treatment Programs.

SECTION-BY-SECTION SUMMARY

Section 353.801 will be repealed and not republished, except for admission criteria to be published within new §353.306.

The repeal of §353.802 will allow for the content to be revised and republished within new §353.307.

The repeal of §353.803 will allow for the content to be revised and republished within new §353.306.

The repeal of §353.804 will allow for the content to be revised and republished within new §353.308.

The repeal of §353.805 will allow for the content to be revised and republished within new §353.314.

FISCAL NOTE

Emily Anderson, Chief Financial Officer, has determined that for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the repeals, under the assumption the repealed chapter will be readopted in modified form.

PUBLIC BENEFIT/COSTS

Lou Serrano, Senior Director of Probation and Community Services, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be that juvenile justice facilities and programs providing substance use disorder treatment to juveniles will be required to provide those services in a manner consistent with other substance use disorder treatment programs in this state and will be subject to state oversight.

Ms. Anderson has also determined that, assuming the repealed chapter will be readopted in modified form, there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by the repeal of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repealed sections are in effect, the sections will have the following impacts:

- (1) The repealed sections do not create or eliminate a government program.
- (2) The repealed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The repealed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The repealed sections do not impact fees paid to TJJD.
- (5) The repealed sections do not create a new regulation.
- (6) The repealed sections do not expand, limit, or repeal an existing regulation.
- (7) The repealed sections do not increase or decrease the number of individuals subject to the sections' applicability.

(8) The repealed sections will not positively or adversely affect the state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires TJJJ to adopt rules that provide minimum standards for the operation of substance abuse facilities that are juvenile justice facilities or juvenile justice programs, as defined by §261.405, Family Code.

No other statute, code, or article is affected by this proposal.

§353.801. *Screening.*

§353.802. *Admission Authorization and Consent to Treatment.*

§353.803. *Assessment.*

§353.804. *Treatment, Planning, Implementation, and Review.*

§353.805. *Discharge.*

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 18, 2021.

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Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 490-7278



SUBCHAPTER I. TREATMENT PROGRAM SERVICES

37 TAC §§353.901 - 353.909

The Texas Juvenile Justice Department (TJJJ) proposes to repeal Texas Administrative Code Chapter 353, Subchapter I, which includes §§353.901 - 353.909, relating to Substance Abuse Treatment Programs.

SECTION-BY-SECTION SUMMARY

The repeal of §353.901 will allow for the content to be revised and republished within new §353.309.

Section 353.902 will be repealed and not republished.

The repeal of §353.903 will allow for the content to be revised and republished within new §353.310.

The repeal of §353.904 will allow for the content to be revised and republished within new §353.312.

Section 353.905 will be repealed and not republished, except for age-appropriate programming and involvement of family or alternate support system to be published within new §353.201, and access to education for day treatment programs to be published within new §353.311.

Sections 353.906, 353.907, 353.908, and 353.909 will be repealed and not republished.

FISCAL NOTE

Emily Anderson, Chief Financial Officer, has determined that for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the repeals, under the assumption the repealed chapter will be readopted in modified form.

PUBLIC BENEFIT/COSTS

Lou Serrano, Senior Director of Probation and Community Services, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be that juvenile justice facilities and programs providing substance use disorder treatment to juveniles will be required to provide those services in a manner consistent with other substance use disorder treatment programs in this state and will be subject to state oversight.

Ms. Anderson has also determined that, assuming the repealed chapter will be readopted in modified form, there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by the repeal of these sections.

GOVERNMENT GROWTH IMPACT

TJJJ has determined that, during the first five years the repealed sections are in effect, the sections will have the following impacts:

(1) The repealed sections do not create or eliminate a government program.

(2) The repealed sections do not require the creation or elimination of employee positions at TJJJ.

(3) The repealed sections do not require an increase or decrease in future legislative appropriations to TJJJ.

(4) The repealed sections do not impact fees paid to TJJJ.

(5) The repealed sections do not create a new regulation.

(6) The repealed sections do not expand, limit, or repeal an existing regulation.

(7) The repealed sections do not increase or decrease the number of individuals subject to the sections' applicability.

(8) The repealed sections will not positively or adversely affect the state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires TJJJ to adopt rules that provide minimum standards for the operation of substance abuse facilities that are juvenile justice facilities or juvenile justice programs, as defined by §261.405, Family Code.

No other statute, code, or article is affected by this proposal.

§353.901. *Requirements Applicable to All Treatment Services.*

§353.902. *Requirements Applicable to Detoxification Services.*

- §353.903. *Requirements Applicable to Residential Services.*
 §353.904. *Requirements for Outpatient Treatment Services.*
 §353.905. *Requirements for Programs for Juveniles.*
 §353.906. *Access to Services for Co-Occurring Psychiatric and Substance Use Disorders (COPSD) Clients.*
 §353.907. *Additional Requirements for COPSD Programs.*
 §353.908. *Specialty Competencies for COPSD Programs.*
 §353.909. *Treatment Planning of Services to Clients with COPSD.*

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 18, 2021.

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Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

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CHAPTER 353. SUBSTANCE USE DISORDER TREATMENT PROGRAMS

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

37 TAC §§353.101 - 353.105

The Texas Juvenile Justice Department (TJJD) proposes new Texas Administrative Code Chapter 353, Subchapter A, which includes §§353.101 - 353.105, relating to Substance Use Disorder Treatment Programs.

SECTION-BY-SECTION SUMMARY

New §353.101 defines terms used in the chapter.

New §353.102 establishes the purpose for the rules in this chapter.

New §353.103 explains what types of facilities or programs are subject to the requirements of this chapter, provides guidance for understanding how certain terms are used, and establishes that other chapters also apply to facilities or programs subject to this chapter.

New §353.104 explains when a juvenile board or designee must notify TJJD concerning the creation or discontinuation of a substance use disorder treatment program.

New §353.105 allows waivers or variances of standards in this chapter.

FISCAL NOTE

Emily Anderson, Chief Financial Officer, has determined that for each year of the first five years the new sections are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the sections.

PUBLIC BENEFIT/COSTS

Lou Serrano, Senior Director of Probation and Community Services, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as

a result of administering the sections will be that juvenile justice facilities and programs providing substance use disorder treatment to juveniles will be required to provide those services in a manner consistent with other substance use disorder treatment programs in this state and will be subject to state oversight.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed sections are in effect, the sections will have the following impacts.

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires TJJD to adopt rules that provide minimum standards for the operation of substance abuse facilities that are juvenile justice facilities or juvenile justice programs, as defined by §261.405, Family Code.

No other statute, code, or article is affected by this proposal.

§353.101. Definitions.

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

- (1) Client--An individual who receives or has received substance use disorder services from a provider in a substance use disorder treatment program.
- (2) Clinical Training Institution--An individual or legal entity registered with the Texas Department of State Health Services to supervise a licensed chemical dependency counselor intern.
- (3) Consenter--The individual legally responsible for giving informed consent for a client.
- (4) Counseling--A collaborative process that facilitates the client's progress toward mutually determined treatment goals and objectives. Counseling includes methods that are sensitive to individual

client characteristics, to the influence of significant others, and to the client's cultural and social context.

(5) Diagnostic and Statistical Manual of Mental Disorders (DSM)--The Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association. Any reference to DSM constitutes a reference to the most recent edition unless the context clearly indicates otherwise.

(6) Discharge--Formal, documented termination of services.

(7) Juvenile Justice Facility (or Facility)--A facility operated wholly or partly by the juvenile board, by another governmental unit, or by a private vendor under a contract with the juvenile board, county, or other governmental unit that serves juveniles under juvenile court jurisdiction. The term includes:

(A) a public or private juvenile pre-adjudication secure detention facility, including a holdover facility;

(B) a public or private juvenile post-adjudication secure correctional facility except for a facility operated solely for children committed to the Texas Juvenile Justice Department; and

(C) a public or private non-secure juvenile post-adjudication residential treatment facility that is not licensed by the Texas Department of Family and Protective Services or the Texas Department of State Health Services.

(8) Juvenile Justice Program (or Program)--A program or department operated wholly or partly by the juvenile board or by a private vendor under a contract with a juvenile board that serves juveniles under juvenile court jurisdiction. The term includes:

(A) a juvenile justice alternative education program;

(B) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court; and

(C) a juvenile probation department.

(9) Licensed Chemical Dependency Counselor--A counselor licensed by the Texas Department of State Health Services pursuant to Chapter 504, Occupations Code.

(10) Licensed Chemical Dependency Counselor Intern--A person registered with the Texas Department of State Health Services who is pursuing a course of training in chemical dependency counseling at a registered clinical training institution.

(11) Life Skills Training--A structured program of training, based upon a written curriculum and provided by qualified personnel, designed to help clients with social competencies such as communication and social interaction, stress management, problem-solving, decision-making, and management of daily responsibilities.

(12) Personnel--The members of the governing body of a juvenile justice facility or juvenile justice program and, without limitation, the employees, contractors, consultants, agents, representatives, volunteers, interns, or other individuals working for or on behalf of the facility or program through a formal or informal agreement.

(13) Prevention--A proactive process that uses multiple strategies to preclude the illegal use of alcohol, tobacco, and other drugs and to foster safe, healthy, drug-free environments.

(14) Provider--A person who provides or offers to provide substance use disorder treatment in a substance use disorder treatment program. The term is limited to a qualified credentialed counselor or any other person authorized by the State of Texas to provide substance use disorder treatment under the supervision of a QCC.

(15) Qualified Credentialed Counselor (QCC)--Means:

(A) a licensed chemical dependency counselor who is licensed and in good standing in the State of Texas;

(B) one of the practitioners listed below who is licensed and in good standing in the State of Texas and, in performing any activity as a QCC, is acting within the authorized scope of the individual's license:

(i) licensed professional counselor (LPC);

(ii) licensed clinical social worker (LCSW);

(iii) licensed marriage and family therapist (LMFT);

(iv) licensed psychologist;

(v) licensed physician;

(vi) licensed physician assistant;

(vii) certified addictions registered nurse (CARN);

(viii) advanced practice registered nurse licensed by the Texas Board of Nursing as a psychiatric/mental health clinical nurse specialist or psychiatric/mental health nurse practitioner; or

(C) an individual with a license that the administrative rules of the Texas Department of State Health Services identify as sufficient to qualify the individual as a QCC.

(16) Recovery Maintenance--A level of treatment designed to maintain and support a client's continued recovery.

(17) Substance Use Disorder--Defined by the most recent published edition of the Diagnostic and Statistical Manual of Mental Disorders (see DSM).

(18) Substance Use Disorder Services (or Services)--A comprehensive term intended to describe activities undertaken to address any substance use disorder, including prevention activities. The term includes the provision of screening, assessment, referral, and treatment.

(19) Substance Use Disorder Treatment (or Treatment)--A planned, structured, and organized clinical intervention designed primarily to help the client achieve appropriate levels of physical, psychological, or social functioning by identifying and changing patterns of behavior that are maladaptive, destructive, or injurious to health and that are related to or resulting from substance use disorders.

(20) Substance Use Disorder Treatment Program (or Treatment Program)--A program that has a primary focus on providing substance use disorder treatment and that is offered by a juvenile justice facility or juvenile justice program. This term means substance abuse facility or program as used in Section 221.002, Human Resources Code.

(21) Supplemental Support--Substance use disorder services that do not meet the definition of substance use disorder treatment, such as drug education, prevention, or other support services that are designed to support substance use prevention or treatment goals.

§353.102. Purpose.

The purpose of these rules is to ensure that juveniles receiving substance use disorder treatment offered by juvenile justice facilities or programs are afforded an efficient, effective, and appropriate continuum of services that are designed to address the juvenile's substance use disorder treatment needs. These rules further serve to protect the health, safety, and welfare of those juveniles receiving substance use disorder treatment.

§353.103. Interpretation and Applicability.

(a) When the terms *include, includes, and including* are used in this chapter, the items that follow constitute a non-exhaustive list unless the context clearly indicates otherwise.

(b) This chapter applies to a juvenile justice facility or juvenile justice program that provides substance use disorder treatment. This chapter does not apply to a juvenile justice facility or juvenile justice program that provides only supplemental support or substance use disorder services that do not include substance use disorder treatment.

(c) The provisions of this chapter apply in addition to other chapters relevant to the juvenile justice facility or program.

§353.104. TJJJ Notification.

(a) A juvenile board or its designee must notify TJJJ in writing prior to a juvenile justice facility or program in its jurisdiction offering a substance use disorder treatment program. This provision does not apply to treatment programs in operation before September 1, 2017.

(b) The juvenile board or its designee must notify TJJJ in writing if the juvenile justice facility or program ceases the operation of a substance use disorder treatment program.

(c) If the juvenile board authorizes a designee to provide either of these notifications, the authorization shall be in writing.

§353.105. Waiver or Variance to Standards.

Unless expressly prohibited by another standard, an application for a waiver or variance of any standard in this chapter may be submitted in accordance with §349.200 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 18, 2021.

TRD-202101979

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 490-7278



SUBCHAPTER B. PROVIDERS

37 TAC §§353.201 - 353.205

The Texas Juvenile Justice Department (TJJJ) proposes new Texas Administrative Code Chapter 353, Subchapter B, which includes §§353.201 - 353.205, relating to Substance Use Disorder Treatment Programs.

SECTION-BY-SECTION SUMMARY

New §353.201 establishes basic standards that providers of substance use disorder treatment must adhere to.

New §353.202 requires providers to offer services and use techniques that are within their scope of practice and limitations of their abilities.

New §353.203 requires the juvenile justice facility or program to verify and document certain qualifications of treatment providers and requires facilities and programs to document compliance with Texas Civil Practices and Remedies Code §81.003.

New §353.204 requires providers to adhere to the professional codes of ethics in their fields and requires facilities and programs

to report suspected unethical conduct in accordance with the rules of the appropriate regulatory body.

New §353.205 requires a facility or program that uses LCDC interns to be registered with the Department of State Health Services as a clinical training institution and to comply with applicable requirements.

FISCAL NOTE

Emily Anderson, Chief Financial Officer, has determined that for each year of the first five years the new sections are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the sections.

PUBLIC BENEFIT/COSTS

Lou Serrano, Senior Director of Probation and Community Services, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be that juvenile justice facilities and programs providing substance use disorder treatment to juveniles will be required to provide those services in a manner consistent with other substance use disorder treatment programs in this state and will be subject to state oversight.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJJ has determined that, during the first five years the proposed sections are in effect, the sections will have the following impacts.

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires TJJJ to adopt rules that provide minimum standards for the operation of substance abuse facili-

ties that are juvenile justice facilities or juvenile justice programs, as defined by §261.405, Family Code.

No other statute, code, or article is affected by this proposal.

§353.201. Standard of Care.

(a) Providers shall:

(1) provide adequate and appropriate services consistent with best practices and industry standards;

(2) maintain objectivity;

(3) respect each client's dignity, protect each client's rights, and act with integrity in providing services;

(4) ensure the treatment services, lectures, and written materials are age-appropriate and easily understood by clients; and

(5) involve the client's parent/guardian or an alternate support system in the treatment process or document why this is not possible or appropriate.

(b) Providers shall not engage in any action that may cause physical, emotional, or other harm to a client.

§353.202. Scope of Practice.

(a) Providers shall recognize the limitations of their abilities and shall not offer services outside their scope of practice or use techniques that exceed their professional competence.

(b) Providers shall not make any claim, directly or by implication, that they possess professional qualifications or affiliations that they do not possess.

§353.203. Verification and Documentation.

(a) Before allowing a provider to provide services in a treatment program, the juvenile justice facility or program shall verify with the credentialing authority that the provider has the required credentials and is in good standing. The juvenile justice facility or program shall maintain documentation of its compliance.

(b) The treatment program shall maintain a list of each of its personnel who qualify as a QCC and maintain documentation that supports such qualification.

(c) The facility or program must comply with its obligations under Section 81.003, Texas Civil Practices and Remedies Code, and maintain documentation of its compliance.

§353.204. Ethics.

(a) Providers must adhere to established professional codes of ethics. These codes of ethics define the professional context within which the provider works in order to maintain professional standards and a professional license and to safeguard the client or participant.

(b) Juvenile justice facilities and programs must adopt and implement written policies and procedures to ensure that all suspected unethical conduct by a provider is reported to the appropriate regulatory body in accordance with the rules of the regulatory body.

§353.205. License Chemical Dependency Counselor Interns.

A facility or program with personnel that includes licensed chemical dependency counselor interns must be registered with the Texas Department of State Health Services as a clinical training institution and comply with all applicable requirements.

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

Filed with the Office of the Secretary of State on May 18, 2021.

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Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 490-7278



SUBCHAPTER C. TREATMENT PROGRAM REQUIREMENTS

37 TAC §§353.301 - 353.314

The Texas Juvenile Justice Department (TJJD) proposes new Texas Administrative Code Chapter 353, Subchapter C, which includes §§353.301 - 353.314, relating to Substance Use Disorder Treatment Programs.

SECTION-BY-SECTION SUMMARY

New §353.301 establishes the rights of clients in substance use disorder treatment programs and requires clients to be notified of these rights.

New §353.302 establishes various requirements concerning client records in areas such as creation, storage, preservation, access, and confidentiality, and requires the treatment program to adopt written policies regarding confidentiality of substance use disorder treatment records.

New §353.303 establishes general requirements for documentation created by a treatment program.

New §353.304 establishes general requirements concerning the location and environment in which services are provided.

New §353.305 lists several requirements pertaining to the policies and procedures of the treatment program.

New §353.306 describes who is eligible for admission to a treatment program and the required elements of the assessment process.

New §353.307 establishes who may authorize admission to a treatment program and establishes various requirements relating to information that must be provided to the client and the consentor.

New §353.308 establishes requirements concerning the creation, contents, review, updating, and documentation of the treatment plan.

New §353.309 establishes requirements in areas such as group size, curriculum, educational information, and qualifications of staff that apply to all levels and types of substance use disorder treatment programs.

New §353.310 establishes minimum requirements for service delivery at the intensive service level and the specialized service level within a residential treatment program.

New §353.311 establishes minimum requirements for service delivery in day treatment programs.

New §353.312 requires outpatient programs to provide certain services in accordance with the client's needs.

New §353.313 addresses the responsibilities of the sending treatment program to provide for continuity of care when a client is transferred to another treatment program.

New §353.314 establishes the responsibilities of the treatment program for discharging a client from treatment, including the required elements of a discharge plan and a discharge summary.

FISCAL NOTE

Emily Anderson, Chief Financial Officer, has determined that for each year of the first five years the new sections are in effect, there will be no significant fiscal impact for either state or local government as a result of enforcing or administering the sections.

PUBLIC BENEFIT/COSTS

Lou Serrano, Senior Director of Probation and Community Services, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be that juvenile justice facilities and programs providing substance use disorder treatment to juveniles will be required to provide those services in a manner consistent with other substance use disorder treatment programs in this state and will be subject to state oversight.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities, and there will be no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed sections are in effect, the sections will have the following impacts.

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires TJJD to adopt rules that provide minimum standards for the operation of substance abuse facilities that are juvenile justice facilities or juvenile justice programs, as defined by §261.405, Family Code.

No other statute, code, or article is affected by this proposal.

§353.301. Notice of Client Rights.

(a) Before services in a treatment program begin, the facility or program shall provide each client with a notice of rights, which shall read as follows:

(1) You have the right to be told the following information before you start receiving services in the treatment program:

- (A) the condition that will be treated;
- (B) the proposed treatment;
- (C) the risks, benefits, and side effects of all proposed treatment;
- (D) how your physical and mental health may be affected if you refuse treatment;
- (E) other treatments that are available and which ones, if any, might be appropriate for you; and
- (F) the amount of time you will probably spend in the treatment program.

(2) You have the right to accept or refuse treatment after a personnel member explains what the treatment will include. However, be aware that refusal to participate in court-ordered treatment may be considered by the court in determining your compliance with probation conditions.

(3) If you agree to treatment, you have the right to change your mind at any time. However, be aware that refusal to participate in court-ordered treatment may be considered by the court in determining your compliance with probation conditions.

(4) You have the right to know that additional action could be taken by the court if you do not complete a treatment program successfully.

(5) You have the right to be told about the treatment program's rules before you start the program, including the rules about restraints and seclusion. Your parent or guardian also has the right to be notified of the rules about restraints and seclusion.

(6) You have the right to a treatment plan designed to meet your needs, and you have the right to participate in developing that plan.

(7) You have the right to meet with the provider on a regular basis to review and update your treatment plan.

(8) You have the right to have information about you kept private and to be told about the times when the information can be given to others without your permission.

(9) You have the right to have your rights and treatment plan explained to you in words you can understand.

(b) The facility or program shall provide each client with the rights in the notice of client rights.

§353.302. Client Records.

(a) The treatment program shall establish and maintain a separate treatment record for every client, beginning at the time of admission into the treatment program.

(b) The treatment program shall protect all client records and other client-identifying information from destruction, loss, or tampering and from unauthorized access, use, or disclosure. These safeguards must protect against verbal disclosure and prevent unsecured maintenance of records or recording of an activity or presentation without appropriate releases. Information that identifies those seeking services shall be protected to the same degree as information that identifies clients.

(c) Only personnel whose duties require access to client records may have such access. The treatment program shall keep records locked at all times unless authorized personnel are continuously present in the immediate area.

(d) The treatment program shall comply with federal and state confidentiality laws and regulations, including 42 CFR Part 2 (federal regulations on the confidentiality of substance use disorder patient records), Chapter 611, Texas Health and Safety Code (relating to mental health records), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The treatment program shall also protect the confidentiality of HIV information as required in Section 81.103, Texas Health and Safety Code (relating to confidentiality; criminal penalty).

(e) The treatment program shall adopt written policies for personnel regarding the confidentiality of substance use disorder treatment records under the law. The policies shall specify the circumstances in which information regarding a client's substance use disorder treatment may be shared by law.

(f) The treatment program may not deny clients access to the content of their records except as provided by Section 611.0045, Texas Health and Safety Code, and HIPAA or other law.

§353.303. General Documentation Requirements.

(a) The treatment program shall keep complete, current documentation.

(b) All documents shall be factual and accurate.

(c) All documents and entries shall be dated and either signed or electronically authenticated by the person responsible for the content.

§353.304. Location and Environment.

(a) Services shall be provided in an appropriate, safe, clean, and well-maintained environment.

(b) Private space must be provided and used for confidential interactions, including all group counseling sessions.

§353.305. Policies and Procedures.

(a) The juvenile justice facility or program shall adopt and implement written policies and procedures for the treatment program. The policies and procedures must contain, at a minimum, the following:

(1) a statement of the treatment program's purposes, goals, and objectives;

(2) a description of the services offered and how they are provided; and

(3) a description of the population to be served.

(b) The policies and procedures shall:

(1) contain sufficient detail to ensure personnel comply with all applicable TJJD rules in this chapter;

(2) be current, as evidenced by documentation establishing that the most recent adoption, amendment, or review occurred no later than the last calendar day of the 12th month following the previous adoption, amendment, or review;

(3) be specific to the treatment program; and

(4) be easily accessible to treatment program personnel at all times.

§353.306. Assessment.

(a) The juvenile must meet the current DSM criteria for a substance use disorder in order to be eligible for admission to a treatment

program. An assessment process appropriate for the target population, juvenile's age, developmental level, culture, and gender shall be used to determine if the juvenile is eligible for the treatment program.

(b) A provider shall conduct and document a comprehensive psychosocial assessment with each client admitted to the treatment program. Documentation shall reflect that the assessment process included consideration of each of the following areas:

(1) presenting problems resulting in admission;

(2) alcohol and other drug use;

(3) psychiatric and substance use treatment;

(4) medical history and current health status, to include an assessment of risk behaviors for tuberculosis, HIV, and other sexually transmitted infections, as permitted by law;

(5) relationships with family;

(6) significant life events, including any trauma;

(7) social and leisure activities;

(8) education and vocational training;

(9) employment history;

(10) legal problems;

(11) mental/emotional functioning; and

(12) strengths and weaknesses.

(c) A comprehensive diagnostic impression, including the client's problems, needs, and strengths, shall be prepared based on the results of the assessment.

(d) If the assessment identifies a previously unidentified mental health issue, the treatment program shall seek appropriate mental health services.

(e) The assessment shall be signed by a QCC and filed in the client record within seven calendar days of admission.

(f) The treatment program may accept an assessment from an outside source if:

(1) the assessment meets the criteria set forth herein;

(2) the assessment was completed during the 30 days preceding admission or is received directly from a treatment program that is transferring the client; and

(3) a provider reviews the information with the client and documents an update.

§353.307. Admission Authorization and Consent to Treatment.

(a) Only a QCC may authorize an admission. The QCC shall authorize each admission in writing and specify the level of care to be provided. The authorization shall be documented in the client record and shall contain sufficient documentation to support the diagnosis and the placement decision.

(b) The treatment program must obtain written authorization from the consenter before providing any treatment. The consent form must be dated and signed by the client, the consenter, and the personnel member providing the information and must include documentation that the client and consenter received and understood the following information:

(1) the specific condition to be treated;

(2) the recommended course of treatment;

(3) the expected benefits of treatment;

(4) the probable health and mental health consequences of not consenting;

(5) the side effects and risks associated with the treatment;

(6) any generally accepted alternatives and whether an alternative might be appropriate;

(7) the qualifications of the personnel member(s) who will provide the treatment;

(8) the name of the primary provider;

(9) the client grievance procedure;

(10) the notice of client rights;

(11) the treatment program rules;

(12) violations that may lead to disciplinary action or discharge;

(13) any consequences or searches used to enforce treatment program rules;

(14) the services and treatment process; and

(15) opportunities for the parent/guardian or an alternate support system to be involved in treatment.

(c) This information shall be explained to the client and consenter in simple, non-technical terms no later than 24 hours after the client's admission to the treatment program. Documentation of the explanation must be dated and signed by the client, the consenter, and the personnel member providing the explanation.

(d) If an emergency or the client's physical or mental condition prevents the explanation from being given or understood by the client within 24 hours of the client's admission to the treatment program, a personnel member must document the circumstances in the client record and present the explanation as soon as possible.

(e) The client record must include a copy of the notice of client rights dated and signed by the client and consenter.

(f) If possible, all information shall be provided in the consenter's primary language.

(g) When an applicant is determined to be eligible for services but denied admission, the treatment program shall maintain documentation signed by the examining QCC that includes the reason for the denial.

§353.308. Treatment Planning, Implementation, and Review.

(a) The provider shall work with the client to develop and implement an individualized, written treatment plan that identifies the services and support needed to address the problems and needs identified in the assessment. The client's parent(s) or guardian(s) shall also be involved unless such involvement is not possible or appropriate. In such instances, the client record shall include documentation explaining why the involvement of the parent(s) or guardian(s) was not possible or appropriate.

(1) When the client needs services not offered by the treatment program, appropriate referrals shall be made and documented in the client's record.

(2) The client record shall contain justification when identified needs are temporarily deferred or not addressed during treatment.

(b) The treatment plan shall include goals, objectives, and strategies.

(1) Goals shall be based on the client's problems/needs, strengths, and preferences.

(2) Objectives shall be individualized, realistic, measurable, time-specific, appropriate to the level of treatment, and clearly stated in behavioral terms.

(3) Strategies shall describe the type and frequency of the specific services and interventions needed to help the client achieve the identified goals and shall be appropriate to the intensity level of the treatment program in which the client is receiving treatment.

(c) The treatment plan shall identify discharge criteria and include initial plans for discharge.

(d) The treatment plan shall include a projected length of stay in the treatment program.

(e) The treatment plan shall identify the client's primary provider and must be dated and signed by the client and the provider. When the treatment plan is prepared by a provider who is not a QCC, a QCC must review and sign the treatment plan.

(f) The treatment plan shall be completed and filed in the client record no later than seven calendar days after admission.

(g) The primary provider shall meet with the client to review and update the treatment plan at appropriate intervals, as defined in writing by the treatment program. In non-residential treatment programs, treatment plans must be reviewed no less frequently than mid-way through the projected duration of treatment. In residential treatment programs, treatment plans must be reviewed no less frequently than monthly.

(h) The treatment plan review shall include:

(1) an evaluation of the client's progress toward each goal and objective;

(2) revision of the goals and objectives, as necessary; and

(3) justification of continued length of stay in the treatment program.

(i) Treatment plan reviews must be dated and signed by the client, the provider, and, if applicable, the supervising QCC.

(j) When a client's intensity of service is changed, the client record must contain:

(1) clear documentation of the decision, signed by a QCC, including the rationale and the effective date;

(2) a revised treatment plan; and

(3) documentation of coordination activities with the receiving provider, if there is a different provider.

(k) Treatment program personnel shall document all substance use disorder services in the client record within 72 hours, including the date, nature, and duration of the contact and the signature or electronic authentication of the provider.

(1) Education, life skills training, and group counseling notes must also include the topics/issues addressed.

(2) Individual counseling notes must include the goals addressed, clinical observations, and new issues or needs identified during the session.

§353.309. Requirements Applicable to All Treatment Programs.

(a) Each client's treatment shall be based on a treatment plan developed in accordance with §353.308 of this chapter.

(b) Group counseling sessions must be limited to a maximum of 16 clients. This limit does not apply to multifamily educational

groups, seminars, outside speakers, or other events designed for a large audience.

(c) Group education and life skills training sessions must be limited to a maximum of 35 clients. This limit does not apply to multi-family educational groups, seminars, outside speakers, or other events designed for a large audience.

(d) Substance use disorder education and life skills training must follow a written curriculum. All educational sessions must include the opportunity for client participation and discussion of the material presented.

(e) The treatment program must provide education about the health risks related to the use of drugs, alcohol, and tobacco products.

(f) The treatment program must include education about tuberculosis, HIV, hepatitis B and C, and sexually transmitted infections.

(g) The treatment program must provide information on accessing screening for tuberculosis and testing for HIV antibody, hepatitis C, and sexually transmitted infections.

(1) HIV antibody testing must be carried out by an entity approved by the Texas Department of State Health Services.

(2) If a client tests positive, the treatment program must refer the client to an appropriate health care provider.

(h) Individuals responsible for planning, directing, or supervising treatment programs must be QCCs. The clinical program director must have at least two years of post-licensure experience providing substance use disorder treatment.

(i) Substance use disorder counseling may be provided only by individuals who meet the definition of a provider in this chapter.

(j) Supplemental support may be provided only by individuals who have the appropriate specialized education and expertise to provide that particular supplemental support.

(k) Counselor interns must be under the direct supervision of a QCC as required by Texas Administrative Code provisions related to QCC's and counselor interns.

§353.310. Additional Requirements for Residential Treatment Programs.

(a) Clients assigned to an intensive service level in a residential treatment program must be provided at least 20 hours of substance use disorder services per week, including at least:

(1) ten hours of substance use disorder treatment (one hour of which must be individual counseling);

(2) five hours of additional substance use disorder treatment, counseling, substance use education, life skills training, coping skills training, and/or relapse prevention education; and

(3) five additional hours of services described in subsection (1) or (2) of this section.

(b) Clients assigned to a specialized service level in a residential treatment program must be provided at least six hours of substance use disorder services per week for each client, including at least:

(1) three hours of substance use disorder treatment (one hour of which must be individual counseling); and

(2) three hours of additional substance use disorder treatment, counseling, substance use education, life skills training, coping skills training, and/or relapse prevention education.

(c) Each residential treatment program must set limits on caseload size that ensure effective, individualized treatment. The

treatment program must justify the caseload size in writing based on the treatment program design, characteristics and needs of the population served, and any other relevant factors.

(d) A treatment program may provide fewer than the number of weekly service hours required in subsections (a) and (b) of this section for good cause, such as the unavailability of the provider or client. All such justifications must be documented in the client record.

§353.311. Additional Requirements for Day Treatment Programs.

(a) Day treatment programs are designed for clients who require substance use disorder services on a daily basis but who do not require the more structured environment of residential treatment to maintain sobriety.

(b) Day treatment programs shall:

(1) have written procedures addressing notification of parents or guardians in the event the client leaves the site of the day treatment program without authorization;

(2) have written procedures addressing the process for daily admission and release of clients;

(3) provide each client, within three school days of admission, access to education approved by the Texas Education Agency; and

(4) provide each client at least 15 hours of substance use disorder services per week, including at least:

(A) one hour of individual counseling; and

(B) 14 hours of additional substance use disorder treatment, counseling, substance use education, life skills training, coping skills training, and/or relapse prevention education. Attendance in school may not be counted toward this requirement.

§353.312. Additional Requirements for Outpatient Treatment Programs.

(a) Outpatient treatment programs are designed for clients who do not require the more structured environment of day treatment or residential treatment to maintain sobriety.

(b) Outpatient treatment programs shall provide each client with one or more of the following, in accordance with the client's needs:

(1) substance use disorder treatment;

(2) educational and process groups;

(3) individual counseling; and

(4) other substance use disorder services.

§353.313. Transfer to Another Treatment Programs.

(a) When a client is transferred to another treatment program for continuing care, the sending treatment program must contact the receiving treatment program to provide information for continuity of care.

(b) With proper client consent, the sending treatment program shall provide the receiving treatment program with copies of relevant parts of the client's record.

§353.314. Discharge.

(a) Before the client's discharge from the treatment program, the provider and client shall develop and implement an individualized discharge plan. The plan must address the client's ongoing needs, including, at a minimum:

(1) individual goals or activities to sustain recovery;

(2) continuity of services to the client, including, if applicable, referrals to other providers or services; and

(3) recovery maintenance services, if applicable.

(b) The treatment program shall include the client's parent/guardian or an alternate support system in the discharge planning process when possible and appropriate. The treatment program shall document the inclusion of the parent/guardian or alternate support system or the reason that it was not possible or appropriate to do so.

(c) The completed discharge plan shall be dated and signed by the provider, the client, and, if applicable, the consentor.

(d) The treatment program shall give a copy of the plan to the client and, if applicable, the consentor and file the signed plan in the client record.

(e) The treatment program shall complete a discharge summary for each client no later than 30 days after discharge. The discharge summary must be signed by a QCC and must include:

(1) dates of admission and discharge;

(2) needs and problems identified at admission, during treatment, and at discharge;

(3) services provided;

(4) assessment of the client's progress towards goals;

(5) reason for discharge; and

(6) referrals and recommendations for recovery maintenance, if applicable.

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

Filed with the Office of the Secretary of State on May 18, 2021.

TRD-202101981

Christian von Wupperfeld

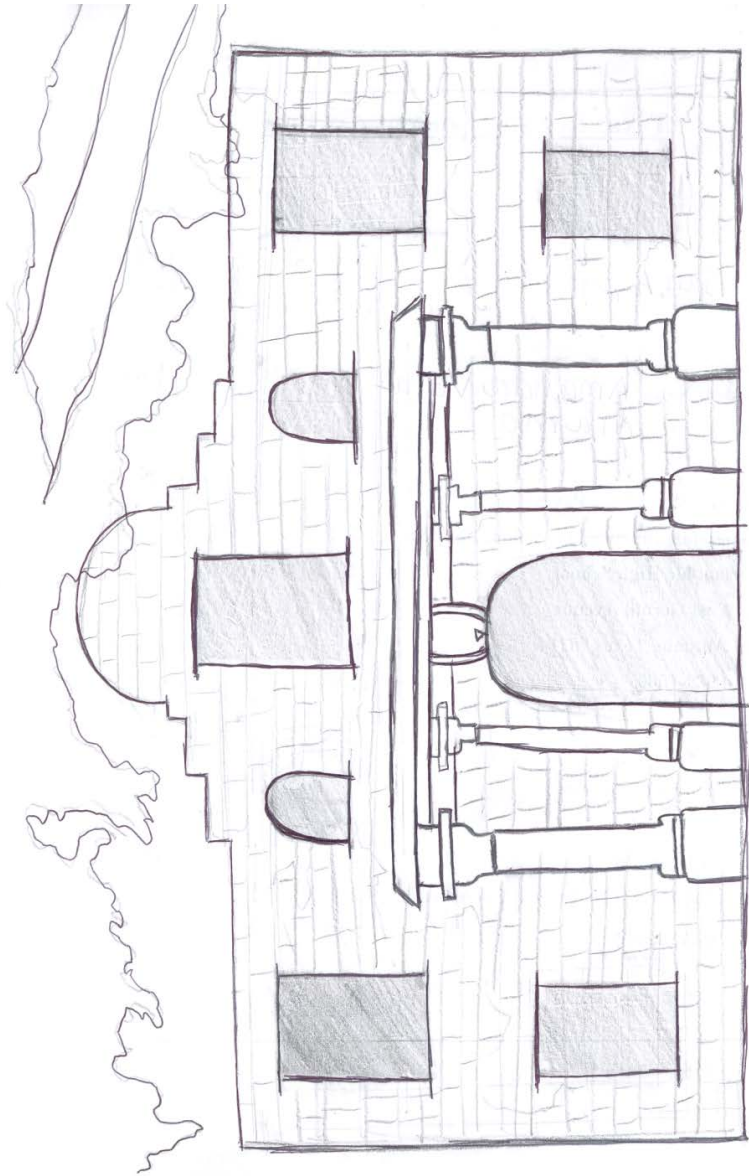
General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: June 27, 2021

For further information, please call: (512) 490-7278





WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.13

The Texas State Board of Examiners of Psychologists withdraws the proposed amended §465.13 which appeared in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1175).

Filed with the Office of the Secretary of State on May 13, 2021.

TRD-202101924

Darrel D. Spinks

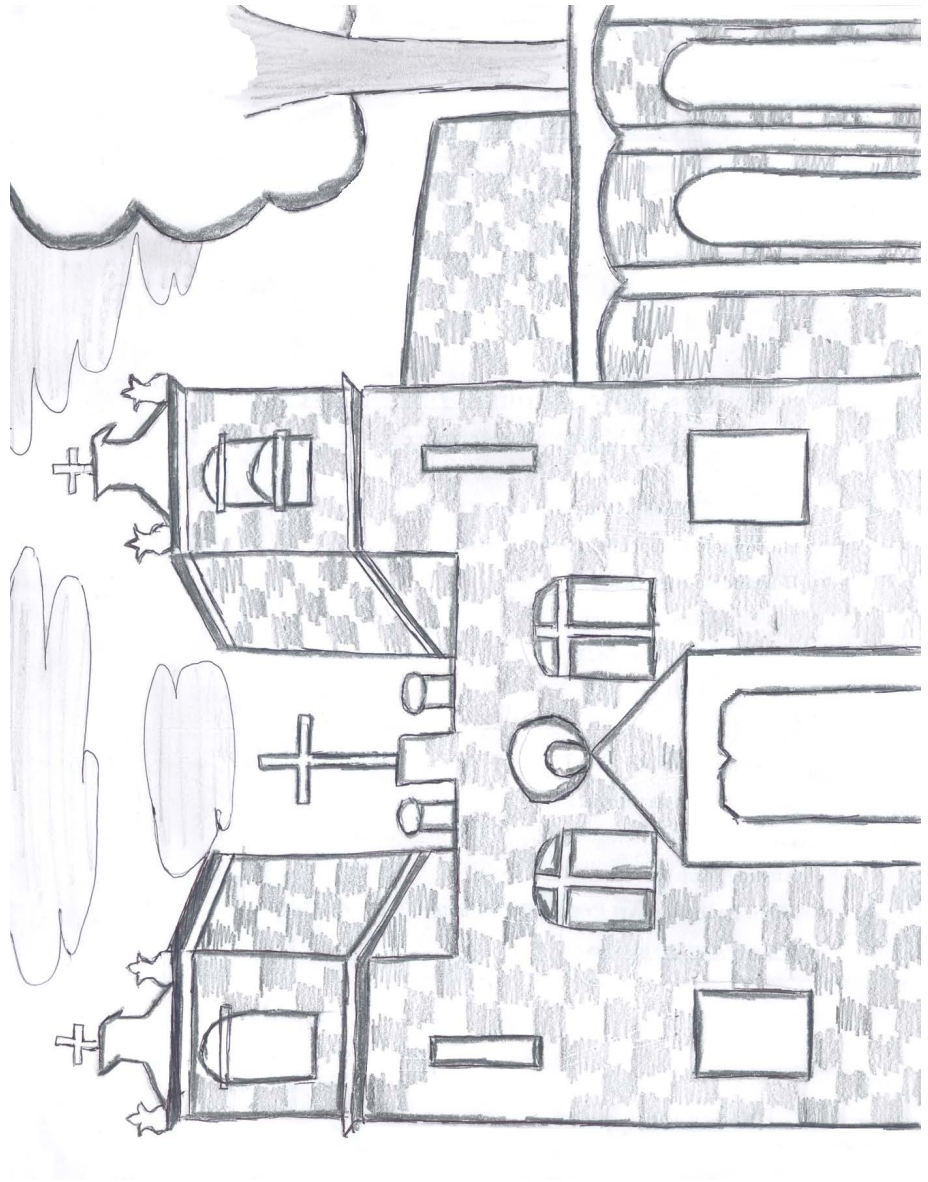
Executive Director

Texas State Board of Examiners of Psychologists

Effective date: May 12, 2021

For further information, please call: (512) 305-7706





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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 7. HOMELESSNESS PROGRAMS

SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §7.33

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC §7.33, Apportionment of ESG Funds with changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1818). Only nonsubstantive changes were made to correct grammar. The purpose of the adoption, under the authority of Tex. Gov't Code §2306.053, is to update the rule to allow the Department to offer an award of funds to existing ESG Subrecipients from the Department's 2021 allocation of Emergency Solutions Grants program funds from the U.S. Department of Housing and Urban Development.

Tex. Gov't Code §2001.0045(b) does not apply to the rule adopted through this action because it was determined that no costs are associated with this action, and, therefore, no costs warrant being offset. The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

REASONED JUSTIFICATION: The Department finds that the adopted amended rule is necessary to streamline the award process for 2021 ESG annual funds.

SUMMARY OF PUBLIC COMMENTS. The public comment period for the adopted amended rule was between March 19, 2021, and April 22, 2021. Written comments were accepted by mail, email, and facsimile. The Department received one comment from one source: Abigail's Arms, Cooke County Family Crisis Center.

COMMENT SUMMARY: The commenter indicates that there is significant need in Cook County for victims of domestic violence during the pandemic and that Abigail's Arms should be allowed to apply for 2021 ESG annual funding.

STAFF RESPONSE: Staff acknowledges the needs of victims of domestic violence and the ongoing needs of persons experiencing homelessness and at-risk of homelessness during the pandemic. Abigail's Arms is an existing subrecipient of ESG Coronavirus Aid Relief and Economic Security Act First Allocation (ESG CARES 1). Through greater flexibility of the ESG CARES 1 funds, TDHCA anticipates being able to be responsive to the changing needs of persons at-risk and experienc-

ing homelessness due to the pandemic, including persons in Cooke County. Additional ESG CARES 1 funding is available to highly-expended ESG CARES 1 subrecipients. Once Abigail's Arms is among the highest expended in their Continuum of Care region, they may be offered additional funding (subject to availability). No changes were made based on the comment received.

The TDHCA Governing Board approved the final order adopting the new rule on May 13, 2021.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendments would be in effect:

1. The adopted amendments do not create or eliminate a government program. These amendments provide the framework for selection of ESG subrecipients for a year in which allocated funds are to be awarded to existing subrecipients rather than through a new competition for funds.

2. The adopted amendments do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The adopted amendments do not require additional future legislative appropriations.

4. The adopted amendments will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The adopted amendments are not creating a new regulation, except that it is amending a rule.

6. The adopted amendments will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because criteria are added to determine eligibility for new funding for existing subrecipients. However, this addition to the rule is necessary to ensure compliance with federal regulations governing the ESG Program.

7. The adopted amendments will neither increase nor decrease the number of individuals subject to the rule's applicability as all persons covered by the rule are existing subrecipients already subject to the rule.

8. The adopted amendments will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting these adopted amendments, has attempted to reduce any adverse economic effect on

small or micro-business or rural communities while remaining consistent with the statutory powers and duties of the Department outlined in Tex. Gov't Code §2306.053.

1. The Department has evaluated these adopted amendments and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The Department has determined that because the adopted amendments are only applicable to nonprofits and local governments that are eligible subrecipients of ESG funds, there will be no economic effect on small or micro-businesses or rural communities.

c. **TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The adopted amendments do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. **LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).** The Department has evaluated the adopted amendments as to their possible effects on local economies and has determined that for the first five years the amendments will be in effect, the proposed amendments have no economic effect on local employment because the proposed amendments only apply to an established grant; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the amount of funding is neither increased nor decreased, and these amendments only provide clarification for administration of an existing grant program, there are no probable effects of the proposed amendments on particular geographic regions.

e. **PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the adopted amendments are in effect, the public benefit anticipated as a result of the proposed amendments will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the amended rule because the processes described by the rule may streamline the existing award process, and this amendment provides clarity on application of an existing rule.

f. **FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the proposed amendments does not have any foreseeable implications related to costs or revenues of the state or local governments this rule only provides clarification for administration of an existing grant program.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted amendments affect no other code, article, or statute.

§7.33. Apportionment of ESG Funds.

(a) The Department will retain funds for Administrative activities. A portion of these Administrative funds in an amount not to exceed .25% of the Department's total allocation of ESG funds may be retained by TDHCA to procure entities to administer a Local Competition for funding within a CoC region. Funds for Administrative or

Program Participant services may be retained by TDHCA to subgrant specific ESG activities, such as legal services.

(b) If the Department receives ESG funding from HUD that has additional activity or geographic restrictions, the Department may elect not to use the Allocation Formula. Retained funds are not subject to the Allocation Formula.

(c) ESG funds not retained for the purposes outlined above will be made available by CoC region based on an Allocation Formula. Allocation Formula factors noted in paragraphs (1) - (4) of this subsection will be used to calculate distribution percentages for each CoC region as follows:

(1) Fifty percent weight will be apportioned to renter cost burden for Households with incomes less than 30% Area Median Family Income (AMFI), as calculated in the U.S. Department of Housing and Urban Development's (HUD) Comprehensive Housing Affordability Strategy;

(2) Fifty percent weight will be apportioned for the number of persons in poverty from the most recent five-year estimate of the American Community Survey released by the U.S. Census Bureau;

(3) Fifty percent weight will be apportioned to point-in-time counts, which are annual counts of sheltered and unsheltered persons experiencing homelessness on one day during the last two weeks of January as required by HUD for CoCs. If a CoC did not conduct a point-in-time count or only completed a partial point-in-time count, the results of the most recent point-in-time count conducted that covered both the sheltered and unsheltered persons experiencing homelessness will be utilized for the purposes of the Allocation Formula; and

(4) Negative 50% weight will be apportioned based on a total of all ESG funding allocated by HUD to local jurisdictions within the CoC region, and ESG funding awarded by the Department within the region from the previous fiscal year.

(d) Each CoC region is allocated a minimum amount of \$100,000. This is accomplished by taking the amounts of all regions with over \$100,000 during the initial allocation and redistributing a proportional share to the regions with less than \$100,000. If the Department distributes by Allocation Formula less than the amount required to provide all regions with \$100,000, then the funds will be split evenly among the CoC regions.

(e) Those ESG funds allocated based on the formula in subsection (b) of this section will be made available for the provision of Program Participant services; they will be made available through a NOFA which may be released on an annual or biennial basis.

(1) Not more than 60% of allocated funds may be awarded for the provision of street outreach and emergency shelter activities.

(2) Contract funding limits include the funding request for all Program Participant services proposed in the Application, HMIS, and Administrative funds.

(A) Applicant must apply for an award amount of at least \$50,000 and not more than \$300,000 for all Program Participant services proposed in the Application.

(B) Funds awarded for HMIS are limited to 12% of the amount of funds awarded for Program Participant services.

(C) Administrative activities are limited to three percent of the amount of funds awarded for Program Participant services.

(f) ESG funds that have been deobligated by the Department or that have been voluntarily returned from an ESG Contract may be reprogrammed at the discretion of the Department, are not included in

the Allocation Formula or award process detailed in subsections (c)-(e) or (g)-(m) of this section.

(g) ESG funds received by the Department from HUD for its 2021 annual allocation of funds will be allocated in accordance with the Allocation Formula (less the amount retained for the Department's Administrative activities), but are not subject to the award process and requirements outlined in §7.38 of this subchapter (relating to Award and Funding Process for Allocated Funds) This was correct.

(h) The 2021 allocation of ESG funds received by the Department will be offered to eligible Subrecipients of ESG funds that were awarded funds under the 2020 ESG NOFA. A 2021 ESG Applicant is ineligible for funding if it:

(1) does not submit an Application for funding within 21 days of the request from TDHCA;

(2) does not resolve administrative deficiencies within the timeframe and in the manner outlined in §7.37 of this subchapter (relating to Application Review and Administrative Deficiency Process for Department NOFAs);

(3) has four or more months of delinquent monthly reports for the Contract under the 2020 ESG NOFA; or, if the Applicant has no contract issued under that NOFA, four or more months of delinquent monthly reports for the existing Contract(s) for ESG Coronavirus Aid Relief and Economic Security (CARES) funds per §7.5(b) of this Chapter (relating to Subrecipient Reporting);

(4) does not satisfy the requirements of the Previous Participation Review as provided for in §1.302 of this Title, (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter);

(5) has unresolved monitoring findings in any TDHCA funded program after the corrective action period; or

(6) is not approved by the Department's Governing Board.

(i) Any offer of 2021 ESG funds made under this section is contingent on retaining similar terms and conditions or agreeing to adjustments reflective of funding amount, including but not limited to performance and match requirements, in the Contract issued under the 2020 ESG NOFA.

(j) If the total amount of the 2021 ESG funding allocated to TDHCA (less the amount available for TDHCA's Administrative activities) is less than 100% of the award amounts of the Contracts issued under the 2020 ESG NOFA, offers of funding will be proportionally reduced based on the total reduction in the amount of the 2021 allocation.

(k) If the total amount of the 2021 ESG funding allocated to TDHCA is equal to or greater than the 2020 ESG allocation, or if there are funds available from reduced awards (e.g. an Applicant is ineligible or accepts less than the full offer of 2021 ESG funding), this subparagraph will apply. If the federal cap of no more than 60% of funds being used for emergency shelter/street outreach (or other federal limitation) for the 2021 ESG funds would be exceeded based on all awardees from the 2020 ESG NOFA accepting a potential offer of 2021 funds, a reduced award may be offered to ensure the cap is not exceeded. All other offers of funds would then be limited to ESG Applicants providing rapid re-housing and homelessness prevention program components, or other activities which are not subject to a federal cap.

(1) ESG Subrecipients that received an award under the 2020 ESG NOFA will be offered an award amount up to 100% of their 2020 ESG Contract award amount, prior to amendments.

(2) Excess amounts will be offered to ESG Subrecipients awarded under the 2020 ESG NOFA that received a partial award of funds, up to their original request. The funds will be divided among all ESG Subrecipients with partial awards under the 2020 ESG NOFA. This proportional share, or the amount needed to increase the partial awards up to the original Application request, whichever is less, will be offered to these Subrecipients. If this process results in one or more Subrecipients receiving funds adequate to fulfill the original Application request, the funds in excess of the full award amount will be offered again to the remaining Subrecipients with a partial award. This process will continue until all partial awards of these Subrecipients are funded up to the original Application request, or until excess amounts are exhausted.

(3) Any remaining 2021 ESG funds may be offered to ESG CARES Subrecipients in regions where the full allocation of 2021 ESG funds were not fully utilized, or may be retained by TDHCA to subgrant to specific ESG activities, such as legal services. All Applicants must be able to satisfy the eligibility requirements of subsection (h) of this section (except that instead of late reports of ESG funding late reports of ESG-CV will be used), and must agree to provide Match in the amount of 100% of the award of 2021 ESG funds.

(l) An ESG Applicant may have the right to appeal funding decisions per 10 TAC §1.7 of this chapter (relating to Appeals Process).

(m) The Department reserves the right to negotiate the final Contract amount and local Match requirement with an Applicant.

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 14, 2021.

TRD-202101931

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: June 3, 2021

Proposal publication date: March 26, 2021

For further information, please call: (512) 475-1762

◆ ◆ ◆
TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 86. VEHICLE TOWING AND BOOTING

16 TAC §86.700

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 86, §86.700, regarding the Vehicle Towing and Booting program, without changes to the proposed text as published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8949). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 86, implement Texas Occupations Code, Chapter 2308, Vehicle Towing and Booting.

The adopted rule clarifies the limited locations to which a tow truck company or a tow truck operator may take a vehicle involved in an Incident Management (IM) or other Non-Consent tow, by stating the two options in more concise language.

Additionally, the adopted rule explicitly prohibits: 1) a tow truck company or tow operator from recommending or soliciting authorization to tow or move a vehicle involved in an IM or other Non-Consent tow to any location other than a licensed vehicle storage facility (VSF) or 2) from obtaining authorization for any repairs or services other than those that are necessary for the tow.

The adopted rule is necessary because the Department continues to see a rise in vehicle "flipping" - a practice which involves towing vehicles involved in IM or other Non-Consent tows from one location to an unlicensed and unregulated body shop for storage and unauthorized work. The adopted rule will explicitly prohibit this practice and allow the Department to prosecute both tow companies and tow truck operators for using deception and dishonesty to funnel disabled vehicles away from licensed VSFs where storage fees are regulated and capped.

The need for rules addressing the practice of "flipping" has been discussed by the Towing and Storage Advisory Board for more than a year. During a Board meeting on September 22, 2020, it formally requested that the Department engage in the rulemaking process on this issue and present it with a proposed draft. The Sunset Commission has also recommended that the Department consider rules on this issue.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §86.700 by:

1. adding tow truck operators to the persons or entities subject to the rule;
2. explicitly adding Incident Management (IM) tows to the rule language to emphasize applicability to all types of Non-Consent tows;
3. adding a prohibition on tow truck companies and tow truck operators recommending or soliciting authorization to tow vehicles involved in IM and other Non-Consent tows to locations other than those allowed by rule;
4. adding clarifying language to emphasize where a vehicle involved in IM or other Non-Consent tows must be taken if the vehicle operator selects a location of their own choosing and the tow truck company or tow truck operator declines to tow the vehicle there; and
5. renumbering all sections.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8949). The deadline for public comments was January 19, 2021. The Department received comments from five interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: Although the Department received five comments, one of them was unrelated to the proposed rule and concerned a licensing question.

Department Response: This unrelated comment was forwarded to the appropriate TDLR Division for handling. The Department did not make any changes to the proposed rule as a result of this unrelated comment.

Comment: Of the remaining four comments, two echoed the sentiment of the Board that "flipping" is an ongoing and pervasive issue in the TOW/VSF industry. Both commenters, speaking as individual licensees, stated that they were in support of the proposed rules and did not suggest any changes.

Department Response: The Department agrees with these two comments. The act of "flipping" has become an increasing concern to both TDLR and TOW/VSF licensees who operate honestly and in compliance with their respective statutes and rules. Both the industry and the Sunset Commission have recognized the need to enhance consumer protection by amending the applicable rule to explicitly address this practice. The Department did not make any changes to the proposed rule as a result of these comments.

Comment: The third remaining comment expressed concern that the proposed rule would allow tow operators to refuse a vehicle owner or operator's request to take their vehicle to a destination of their choice and instead re-route the vehicle to a VSF that may be at a much farther distance and which may also be owned by the tow company. The commenter, commenting as an individual licensee, further expressed that the vehicle owner or operator could be subject to "'extortion' through no fault of their own. Although the commenter did not explicitly express whether they supported or opposed the proposed rule, TDLR construes the comment as being opposed to the rule.

Department Response: The Department disagrees with this comment. The rule protects consumers from unilateral, and often undisclosed, decisions by tow operators to take vehicles to unregulated body shops. Additionally, the rule protects tow operators by providing them with the ability to decline to take the vehicle to locations suggested by a consumer that may be long distances, or which may be difficult to reach. By mandating that if a tow operator declines to take the vehicle to a destination chosen by the vehicle owner or operator it must still be taken to a regulated vehicle storage facility, the rule effectively reduces the opportunity for "flipping" to occur. The Department did not make any changes to the proposed rule as a result of this comment.

Comment: The fourth remaining comment proposed a modification to the proposed rule to remove tow companies from being subject to the rule. The commenter, commenting as an individual licensee, stated that tow companies may not have control over a tow operator or know what they are doing but will still be held accountable under the rule. Although the commenter did not explicitly express whether they supported or opposed the proposed rule, TDLR construes the comment as being opposed to the rule.

Department Response: The Department disagrees with this comment. The rule addresses the significant problem for TDLR Enforcement of tow companies seeking to absolve themselves from engaging in "flipping" by asserting that they are not responsible for the actions of tow operators. It also puts equal responsibility onto tow companies and tow operators to recognize and stop a practice which harms consumers and the industry. The Department did not make any changes to the proposed rules as a result of this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Towing and Storage Advisory Board met on March 16, 2021, to discuss the proposed rule and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register*. At its meeting on May 6, 2021, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and Texas Occupations Code, Chapter 2308, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and Texas Occupations Code, Chapter 2308. No other statutes, articles, or codes are affected by the adopted rule.

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

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

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Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671



CHAPTER 120. LICENSED DYSLEXIA THERAPISTS AND LICENSED DYSLEXIA PRACTITIONERS

16 TAC §§120.21 - 120.23, 120.25, 120.90

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 120, §§120.21, 120.22, 120.23, 120.25, and 120.90, regarding the Dyslexia Therapy Program, with changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8687). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 120 implement Texas Occupations Code, Chapter 403, Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists.

The proposed rules make changes recommended by Department staff to reduce the documentation that must be provided by license applicants who are certified by the Academic Language Therapy Association (ALTA); to clarify courses that qualify for continuing education credit; to allow telehealth services without an initial in-person meeting; and to correct cross-references. The proposed rules also make changes recommended by the Education and Examination Workgroup of the Dyslexia Therapy Advisory Committee to designate the examinations approved by the Department and to allow continuing education credit for the human trafficking prevention training course required for license

renewal. The proposed rules are necessary to remove unnecessary burdens in obtaining and renewing a license; to designate the examinations required for licensure; to increase the availability of telehealth services; and to provide clarity.

The proposed rules were presented to and discussed by the Dyslexia Therapy Advisory Committee at its meeting on October 27, 2020. The Advisory Committee did not recommend any changes to the proposed rules. The Advisory Committee voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §120.21, Dyslexia Therapist Licensing Requirements, by allowing a person who holds current certification as an academic language therapist issued by ALTA to apply for a dyslexia therapist license without being required to provide a diploma or transcript proving that the person has earned a master's degree from an accredited institution of higher education.

The adopted rules amend §120.22, Dyslexia Practitioner Licensing Requirements, by allowing a person who holds current certification as an academic language practitioner issued by ALTA to apply for a dyslexia practitioner license without being required to provide a diploma or transcript proving that the person has earned a bachelor's degree from an accredited institution of higher education.

The adopted rules amend §120.23(a) by designating the therapist level examination administered by ALTA as the examination required for licensure as a dyslexia therapist. The adopted rule language includes a change recommended by Department staff to remove the specific name of the examination currently administered by ALTA to allow for future changes to the name.

The adopted rules amend §120.23(b) by designating the practitioner level examination administered by ALTA as the examination required for licensure as a dyslexia practitioner. The adopted rule language includes a change recommended by Department staff to remove the specific name of the examination currently administered by ALTA to allow for future changes to the name.

The adopted rules amend §120.25, Continuing Education, by clarifying that courses and programs provided by education service centers are included in the acceptable categories for continuing education credit; correcting erroneous cross-references; and allowing the human trafficking prevention training course required for license renewal to be accepted for up to one hour of continuing education credit.

The adopted rules amend §120.90, Professional Standards and Basis for Disciplinary Action, by removing the prohibition against providing services solely by written, telephone, or electronic/video correspondence or communication; and renumbering the remaining provisions accordingly. This change will allow a license holder to provide telehealth services without the requirement for an initial in-person meeting with a client.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8687). The deadline for public comments was January 4, 2021. The Department did not receive any comments from interested parties on the proposed rules during the 30-day public comment period.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Dyslexia Therapy Advisory Committee met on February 24, 2021, to discuss the proposed rules. The Advisory Committee recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §120.23 made in response to Department recommendations, as explained in the Section-by-Section Summary. At its meeting on May 6, 2021, the Commission adopted the proposed rules with changes as recommended by the Advisory Committee.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 403, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 403. No other statutes, articles, or codes are affected by the adopted rules.

§120.21. *Dyslexia Therapist Licensing Requirements.*

(a) A person who holds current certification as an academic language therapist issued by the Academic Language Therapy Association or its equivalent as approved by the department, may be licensed as a dyslexia therapist if the person has earned at least a master's degree from an accredited public or private institution of higher education.

(b) A person who qualifies for licensure under subsection (a) is not required to provide documentation to the department that the person meets the requirements of Occupations Code §403.105, Eligibility for Licensed Dyslexia Therapist License.

(c) A licensed dyslexia therapist may practice in a school, learning center, clinic, or private practice setting.

§120.22. *Dyslexia Practitioner Licensing Requirements.*

(a) A person who holds current certification as an academic language practitioner issued by the Academic Language Therapy Association or its equivalent, as approved by the department, may be licensed as a dyslexia practitioner if the person has earned a bachelor's degree from an accredited public or private institution of higher education.

(b) A person who qualifies for licensure under subsection (a) is not required to provide documentation to the department that the person meets the requirements of Occupations Code §403.104, Eligibility for Licensed Dyslexia Practitioner License.

(c) A licensed dyslexia practitioner may practice only in an educational setting, including a school, learning center, or clinic.

§120.23. *Examination.*

(a) The examination designated and approved by the department for licensure as a dyslexia therapist is the therapist level examination administered by the Academic Language Therapy Association.

(b) The examination designated and approved by the department for licensure as a dyslexia practitioner is the practitioner level examination administered by the Academic Language Therapy Association.

(c) The applicable licensure examination requirement is waived for a person who holds current certification as an academic language therapist or academic language practitioner issued by the Academic Language Therapy Association, or its equivalent, as approved by the department.

§120.25. *Continuing Education.*

(a) A license holder must complete 20 clock-hours of continuing education during each two-year licensure period.

(b) Continuing education credit taken by a license holder for renewal shall be acceptable if the experience falls in one or more of the following categories and meets the requirements of subsection (c):

(1) academic courses at a regionally accredited college or university;

(2) in-service educational programs, training programs, institutes, seminars, workshops and conferences, including courses and programs provided by education service centers;

(3) instructing or presenting education programs or activities at an academic course, in-service educational programs, training programs, institutes, seminars, workshops and conferences not to exceed five clock-hours each continuing education period;

(4) publishing a book or an article in a peer review journal not to exceed five clock-hours each continuing education period; or

(5) successful completion of a self-study program, not to exceed ten clock-hours each continuing education period.

(c) Continuing education credit taken by a license holder, shall be in one or more of the following content areas:

(1) basic language and/or learning disorders;

(2) applied multisensory practice and methodology;

(3) curricula in academic language therapy;

(4) related research in medicine, psychology, education, or linguistics; or

(5) professional practice, including relevant laws, rules, and ethics of practice.

(d) Continuing education experience shall be credited as follows:

(1) Completion of course work at or through an accredited college or university, shall be credited for each semester hour on the basis of ten clock-hours of credit for each semester hour successfully completed for credit or audit as evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs that meet the criteria of subsection (b)(2) or (3) shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education experience.

(3) A clock-hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(4) Continuing education programs, as described in subsection (b)(2) and (3), must be offered or approved by the Academic Language Therapy Association or its equivalent, as approved by the department.

(5) Successful completion of continuing education experience, as described in subsection (b)(2) and (3), is evidenced by a certificate of completion or attendance issued by the approved sponsoring organization of the course.

(6) Successful completion of continuing education experience, as described in subsection (b)(4), is evidenced by submission of a copy of the publication.

(7) Successful completion of continuing education experience, described in subsection (b)(5), is evidenced by a certificate of

completion presented by the sponsoring organization of the self-study program.

(e) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours, are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(f) The audit process shall be as follows.

(1) The department shall select for audit, a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(2) All license holders selected for audit shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the license holder's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) A license holder who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until the required continuing education documents are received, accepted and approved by the department.

(g) Licenses will not be renewed until continuing education requirements have been met.

(h) A person who fails to complete continuing education requirements for renewal may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining a license.

(i) The department may not grant continuing education credit to any license holder for:

(1) education incidental to the regular professional activities of a license holder, such as learning occurring from experience or research;

(2) professional organization activity, such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before or after the period of time described in subsection (a); or

(4) performance of duties that are routine job duties or requirements.

(j) The human trafficking prevention training course required for license renewal under §120.26(b) may be accepted for up to one hour of continuing education credit.

§120.90. Professional Standards and Basis for Disciplinary Action.

(a) This section is authorized under Texas Occupations Code, Chapters 51 and 403.

(1) If a person violates any provision of Texas Occupations Code, Chapters 51, 403, or any other applicable provision, this chapter, or a rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of the Texas Occupations Code and the associated rules.

(2) The enforcement authority granted under Texas Occupations Code, Chapters 51 and 403, and any associated rules may be used to enforce the Texas Occupations Code and this chapter.

(b) A license holder shall comply with the following requirements in the provision of professional services. All license holders shall:

(1) only provide professional services that are within the scope of the license holder's competence, considering level of education, training, and experience.

(2) ensure a safe therapy or teaching environment for clients.

(3) not jeopardize a client's safety or well-being by abusive or inattentive behavior.

(4) maintain objectivity in all matters concerning the welfare of the client.

(5) terminate a professional relationship when it is reasonably clear that the client is not benefitting from the services being provided or when it is reasonably clear that the client no longer needs the services.

(6) seek to identify competent, dependable referral sources for clients and shall refer when requested or appropriate.

(7) provide accurate information to clients and the public about the nature and management of dyslexia and about the services rendered.

(8) be knowledgeable of all available diagnostic data and other relevant information regarding each client.

(9) not guarantee, directly or by implication, the results of any therapeutic or teaching services, except that a reasonable statement of prognosis may be made. A license holder shall not mislead clients to expect results that cannot be predicted from reliable evidence.

(10) accurately represent and describe any product created or recommended by the license holder.

(11) not require the exclusive use or purchase by a client of any product created or produced by the license holder.

(12) not use his or her professional relationship with a client to promote any product for personal gain or profit, unless the license holder has disclosed to the client the nature of the license holder's personal gain or profit.

(13) not misrepresent his or her education, training, credentials, or competence.

(14) fully inform clients of the nature and possible outcomes of services rendered.

(15) obtain written consent from a client or a minor client's parent or legal guardian in order to use the client's data or information for research or teaching activities.

(16) not falsify records.

(17) bill a client or third party only for the services actually rendered in the manner agreed to by the license holder and the client or the minor client's parent or legal guardian.

(18) not provide professional services to a client who is receiving dyslexia services from another license holder, except with the prior knowledge and consent of the other license holder.

(19) not reveal, without authorization, any professional or personal information about a client unless required by law or compelled

by a court to do so, or unless doing so is necessary to protect the welfare of the client or of the community. If a license holder reveals professional or personal information about a client without authorization, the information disclosed, the person or entity to whom it was disclosed, and the justification for disclosure shall be documented by the license holder in the client's record.

(20) provide, in plain language, a written explanation of the charges for professional services previously made on a bill or statement, upon the written request of a client or the minor client's parent or legal guardian.

(21) not engage in the medical diagnosis or treatment of clients.

(22) not engage in sexual contact, including intercourse or kissing, sexual exploitation, or therapeutic deception, with a client. Sexual contact and sexual intercourse mean the activities and behaviors described in Penal Code, §21.01. Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. Therapeutic deception means a representation by a license holder that sexual contact with, or sexual exploitation by, the license holder is consistent with, or part of, the professional services being provided to the client.

(23) not use alcohol or drugs, not legally prescribed for the license holder, when the use adversely affects or could adversely affect the provision of professional services.

(24) not offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting clients or patronage.

(25) comply with all provisions of the Act and this chapter, as well as any other state or federal law or rule that relates to the provision of professional services by, or the regulation of the license holder.

(26) not obtain a license by means of fraud, misrepresentation, or concealment of a material fact.

(27) not sell, barter, or offer to sell or barter a license.

(28) inform the department of any violations of this chapter or the Act.

(29) comply with any order issued by the department that relates to the license holder.

(30) not interfere with a department investigation or disciplinary proceeding by misrepresentation or omission of facts to the department or by the use of threats or harassment against any person.

(31) cooperate with the department by promptly furnishing required documents and by promptly responding to a request for information from the department.

(32) provide professional services without discrimination based on race, color, national origin, religion, gender, age, or disability.

(c) A license holder in private practice shall:

(1) provide a client or a minor client's parent or legal guardian with a written agreement for services prior to the commencement of professional services.

(A) The agreement shall contain, at a minimum, a description of the services to be provided, goals, techniques, materials, the cost for services, payment arrangements and policies, hours, cancellation and refund policies, contact information for both parties, and the dated signatures of both parties.

(B) Any subsequent modifications to the agreement shall be signed and dated by both parties.

(2) maintain legible and accurate records of professional services rendered. A license holder practicing in an educational setting, including a school, learning center, or clinic, shall comply with the recordkeeping requirements of the educational setting.

(3) maintain records for a minimum of five years following the termination of services. A license holder practicing in an educational setting, including a school, learning center, or clinic, shall comply with the records retention requirements of the educational setting.

(4) not delegate any service requiring professional competence to a person not competent to provide the service. A license holder in private practice is responsible for the services provided by unlicensed persons employed or contracted by the license holder.

(5) notify each client or the minor client's parent or legal guardian of the department's name, website, email address, mailing address, and telephone number for the purpose of directing complaints to the department by providing notification on a sign prominently placed in the primary place of business or on a written document, such as an agreement or contract for services or an informational brochure provided by a license holder to a client or the minor client's parent or legal guardian.

(6) display the license in the primary location of practice, but shall not display a license that has been photographically or otherwise reproduced.

(d) Information used by a license holder in any advertisement or announcement shall not contain information that is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements. False, misleading, or deceptive advertising or advertising not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a professional service;

(3) compares a professional's services with another professional's services unless the comparison can be factually substantiated;

(4) causes confusion or misunderstanding as to the credentials, education, or licensing of a professional;

(5) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of client; or

(6) represents in the use of a professional name, a title or professional identification that is expressly or commonly reserved to or used by another profession or professional, unless the license holder is licensed or otherwise authorized to use the title or professional identification.

(e) Records are the responsibility and property of the entity or individual who owns the practice or the practice setting.

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 12, 2021.

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General Counsel
Texas Department of Licensing and Regulation
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Proposal publication date: December 4, 2020
For further information, please call: (512) 475-4879



CHAPTER 121. BEHAVIOR ANALYST

16 TAC §§121.10, 121.21, 121.22, 121.70, 121.71, 121.75

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 121, §§121.10, 121.21, 121.22, 121.70, and 121.75, regarding the Behavior Analysts Program, without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8691). These rules will not be republished.

The Commission also adopts new rules at 16 TAC Chapter 121, §121.71, regarding the Behavior Analysts Program, with changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8691). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 121 implement Texas Occupations Code, Chapter 506, Behavior Analysts, and Chapter 111, Telemedicine and Telehealth.

The proposed rules establish standards and responsibilities for delivering behavior analysis services by license holders who choose to provide their services using telehealth. The proposed rules also add relevant definitions, update cross references, and make minor editorial changes in the chapter. The proposed rules are necessary to provide uniform standards and guidelines for the way license holders may practice behavior analysis using telehealth services.

The behavior analyst professional community is regulated by its national certifying entity but desired to create state telehealth standards for Texas. Telehealth as a method of providing behavior analysis services has long been practiced in the state and the rule amendments compile and organize minimum requirements in a framework that will promote consistency and uniform quality of care. The Standard of Care Workgroup of the Advisory Board met on July 20 and September 14 of 2020 to discuss and draft rule language.

The proposed rules were presented to and discussed by the Behavior Analyst Advisory Board at its meeting on November 4, 2020. The Advisory Board made the following changes to the proposed rules: changed "behavior analyst" to "license holder" in new §121.71(a)(1)(C); added "A provider shall consider relevant factors including the client's behavioral, physical, and cognitive abilities in determining the appropriateness of providing services via telehealth" in new §121.71(d)(4); added "to a client" to the second half of the sentence in §121.71(d)(14); and made additional minor editorial changes in §121.75. The Advisory Board voted and recommended that the proposed rules with these changes be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §121.10 by adding thirteen definitions relevant to the practice of telehealth, make minor edits in three existing definitions, and renumber the section accordingly.

The adopted rules amend §121.21, Behavior Analyst Licensing Requirements, by adding a provision that clarifies that a behavior analyst must be licensed in Texas to serve clients in Texas unless exempt.

The adopted rules amend §121.22, Assistant Behavior Analyst Licensing Requirements, by adding a provision that clarifies that an assistant behavior analyst must be licensed in Texas to serve clients in Texas unless exempt.

The adopted rules amend §121.70, Responsibilities of License Holders, by changing the section title to Administrative Practice Responsibilities of License Holders. Professional practice responsibilities are moved from this section to a newly created section, and a set of administrative practice responsibilities for telehealth service is added to §121.70, including minimum requirements for data transmission and technology, and specifying methods of practice and activities that may be conducted using telehealth. Minor editorial changes are also made in the section.

The adopted rules add new §121.71, Professional Services Practice Responsibilities of License Holders. Existing professional responsibilities are moved from §121.70 into the new section, and new requirements are added in the section for professional responsibilities for practicing telehealth. Requirements for disclosure and client consent are updated to include consent for treatment delivery using telehealth, and minimum standards for quality of services, including legal requirements, use of facilitators, supervision, complaints, and records are provided. Cross reference corrections and minor editorial changes are also made in the section. In response to public comments received, the Advisory Board made the following changes to the proposed rules: removed "experimental" and added two instances of "yet" to §121.71(a)(2)(A) to read: "(A) the client's consent to treatment that is transitional or provisional or for which its effectiveness has not yet been established, or effectiveness has not yet been established for the method, manner, or mode of treatment for which consent is obtained;" and replaced "the procedure is experimental" with "the effectiveness of the procedure has not yet been established for the method, manner, or mode of treatment" in §121.71(d)(3).

The adopted rules amend §121.75, Code of Ethics, to update cross references in accordance with renumbered provisions elsewhere in the chapter, and to make minor editorial changes.

PUBLIC COMMENTS

The Texas Department of Licensing and Regulation (Department) drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8691). The deadline for public comments was January 4, 2021. The Department received comments from three interested parties on the proposed rules during the 30-day public comment period, from the Texas Association for Behavior Analysis Public Policy Group (TxABA PPG); the Behavioral Health Center of Excellence (BHCOE); and the Center for Autism and Related Disorders (CARD). The public comments are summarized below.

Comment--TxABA PPG commented in support of the rule amendments, commending the addition of thirteen definitions; the requirement for behavior analysts and assistant behavior

analysts to be licensed in Texas to provide services to clients in Texas; the addition of administrative practice responsibilities related to telehealth; the creation of a new section for professional practice responsibilities including the new provisions related to telehealth; and the editorial changes to the Code of Ethics. TxABA PPG commented that the telehealth rules provide a framework for license holders that will result in uniform quality of care and protect the public.

Department Response--The Department appreciates the support expressed by TxABA PPG and agrees that the new and amended rules for the provision of behavior analysis using telehealth will benefit both clients and the profession. No changes have been made to the rules in response to this comment.

Comment--BHCOE and CARD oppose the use of the word "experimental" in two subsections of §121.71:

--(a) "A license holder shall: (2) include in the service agreement or otherwise document and disclose to a client, as appropriate:

(A) the client's consent to treatment that is transitional, experimental, or provisional or for which its effectiveness has not been established, or effectiveness has not been established for the method, manner, or mode of treatment for which consent is obtained"

--(d)(3) ". . . A telehealth provider shall maintain a focus on evidence-based practice and identify appropriate meaningful outcomes for a client. When an established telehealth procedure is not available, a license holder shall notify a client or multi-disciplinary team, as appropriate, that the procedure is experimental."

The BHCOE objects to the characterization of behavior analysis practiced using telehealth as "experimental." The BHCOE states that the treatment itself is still evidence-based and is administered within the same practice standards of the licensed practitioner. BHCOE also expressed concern that labeling treatment administered through telehealth as experimental may affect insurance reimbursement for services.

CARD expressed support for the Department's rules to facilitate the practice of behavior analysis through telehealth. However, CARD echoes the concerns that the use of the word "experimental" in the proposed rule opens the door to characterizing behavior analysis treatment as experimental. CARD raised the concern that insurance coverage could be denied or adverse benefit determinations could result. Citing Insurance Code §1355.251, defining nonquantitative treatment limitations that include "a medical management standard limiting or excluding benefits based on . . . whether a treatment is experimental or investigational," CARD recommends that the Department's rule specifically refer to Insurance Code, §1355.251.

The commenter noted that Texas law prohibits limits on mental health care such as behavior analysis from being more restrictive than limits on other health care services but believes the Department's rule does this by labeling behavior analysis treatment experimental. CARD commented that the rule does not define what is an established telehealth procedure such that a treatment should be characterized as experimental if it does not fit that meaning or if an established telehealth procedure does not exist. CARD expressed concern that established behavior analysis treatment, unlike other healthcare services, is being required to be labeled as experimental if the mode of delivery has changed to telehealth, and therefore is being treated more restrictively than other health care services. Both BHCOE and CARD request the removal of the two sentences in §121.71 that

contain the word "experimental" and, if they are not removed, CARD recommends that the Department clarify that characterizing behavior analysis as experimental is not a basis on which insurers or health plans may deny coverage.

Department Response--The Department appreciates CARD's support for the telehealth rules. The Department disagrees that the rule amendments characterize treatment delivered using telehealth as experimental. However, the Department agrees that requiring the use of the word "experimental" to describe a telehealth procedure that has not become established is not necessary. The rule text in §121.71(d)(3) has been modified to require that notification that the effectiveness of the procedure has not been established is required, and the license holder may use any appropriate descriptors applicable to the treatment or the method of delivery of the treatment. In addition, the word "experimental" has been removed from §121.71(a) to avoid misinterpretation. The license holder is not required to use any particular terminology but must accurately describe the support for the effectiveness of both the treatment that is to be provided and its delivery using telehealth when obtaining consent for behavior analysis treatment. This specificity for the consent to treatment is in keeping with the license holder's professional and ethical responsibilities under the Act, this chapter, and the certifying entity's requirements regarding the obligation to be candid and forthright with clients about the provision of services.

The Department is unable to prescribe by rule what treatments or treatment methods should be considered experimental; the license holder must make this determination individually for each client. Even a behavior analysis treatment method that is fully accepted as evidence-based and effective may not be demonstrated to be effective when delivered using telehealth. Under such conditions the license holder is obligated to acknowledge that the effectiveness of the telehealth procedure has not yet been established for the particular behavior analysis service provided using that method of delivery. The Department has added the word "yet" to the two modified rule provisions to reflect the ongoing process and temporal nature of the development of evidence to support delivery of services via telehealth.

The Department is not authorized to regulate the obligations of license holders in relation to billing or payment for behavior analysis services and does not interpret or enforce related requirements. Behavior analysts are obligated to know and follow the law governing the practice of their profession, including restrictions and limitations on the provision of their services. The Department does not regulate the terminology used for billing purposes or for describing the treatment and services provided to clients, other than to require it to be truthful and accurate.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Behavior Analyst Advisory Board met on February 26, 2021, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register*, with the noted changes to §121.71 made in response to public comments. At its meeting on May 6, 2021, the Commission adopted the proposed rules with changes as recommended by the Board.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing

body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the adopted rules.

§121.71. Professional Services Practice Responsibilities of License Holders.

(a) A license holder shall:

(1) enter into a service agreement with a client, as defined in §121.10, when behavior analysis services are to be provided;

(A) A behavior analyst shall describe the services to be delivered in a service agreement that may include the following activities: consultation, assessment, training, treatment design, treatment implementation, and treatment evaluation.

(B) A behavior analyst shall create a treatment plan when the service agreement provides for delivering treatment to an individual.

(C) A treatment plan is not required if a license holder will not deliver treatment to an individual.

(2) include in the service agreement or otherwise document and disclose to a client, as appropriate:

(A) the client's consent to treatment that is transitional or provisional or for which its effectiveness has not yet been established, or effectiveness has not yet been established for the method, manner, or mode of treatment for which consent is obtained;

(B) conflicts of interest or multiple relationships that a license holder is aware of or becomes aware of, as defined in §121.10;

(C) a description of how a conflict of interest or multiple relationship will be addressed if one is discovered or disclosed;

(D) the acknowledgment of known conflicts of interest or multiple relationships and agreement to begin or to continue behavior analysis services despite them; and

(E) a reasoned justification for beginning or continuing to provide behavior analysis services if conflicts of interest or multiple relationships are acknowledged;

(3) re-evaluate treatment progress as needed and at least annually, and document the evaluation; and

(4) comply with all applicable requirements of the license holder's certifying entity, including the BACB Professional and Ethical Compliance Code for Behavior Analysts, when entering into service agreements and providing behavior analysis services.

(b) If any requirement of a license holder's certifying entity differs in stringency from a requirement of the Act or the commission rules, the more stringent provision shall apply.

(c) If any requirement of a license holder's certifying entity conflicts with a requirement of the commission rules such that the license holder cannot reasonably comply with both requirements, the license holder shall comply with the requirement of the certifying entity.

(d) Professional Services Practice Responsibilities: Telehealth.

(1) Except to the extent it imposes additional or more stringent requirements, this subsection does not affect the applicability of any other requirement or provision of law to which a person is subject

under the Act, this chapter, or other law, or by the person's certifying entity, when the person is functioning as a provider of telehealth services.

(2) The requirements of this section apply to the use of telehealth by behavior analysts and assistant behavior analysts licensed under this chapter.

(3) A license holder shall provide the same quality of services via telehealth as is provided during in-person sessions. A telehealth provider shall maintain a focus on evidence-based practice and identify appropriate meaningful outcomes for a client. When an established telehealth procedure is not available, a license holder shall notify a client or multi-disciplinary team, as appropriate, that the effectiveness of the procedure has not yet been established for the method, manner, or mode of treatment.

(4) A telehealth provider shall notify a client or multi-disciplinary team, as appropriate, of the conditions of telehealth services, including, but not limited to, the right to refuse telehealth services, options for service delivery, differences between in-person and remote service delivery methods, and instructions for filing and resolving complaints.

(A) A telehealth provider shall obtain client consent before services may be provided through telehealth.

(B) A provider shall consider relevant factors including the client's behavioral, physical, and cognitive abilities in determining the appropriateness of providing services via telehealth.

(C) If a client previously consented to in-person services, a telehealth provider shall obtain updated consent to include telehealth services.

(5) Telehealth providers shall not provide services by correspondence only, e.g., mail, email, or faxes, although these may be used as adjuncts to telehealth.

(6) The initial contact between a license holder and a client may be at the same physical location or through telehealth, as deemed appropriate by the license holder.

(7) Telehealth providers shall comply with all laws, rules, and certifying entity requirements governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.

(8) A telehealth provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of a client when providing services through telehealth.

(9) Supervision undertaken through telehealth must meet the standards of the certifying entity.

(10) Subject to the requirements and limitations of this section, a telehealth provider may utilize a facilitator at a client site to assist the provider in rendering telehealth services.

(11) A telehealth provider, before allowing a facilitator to assist a provider in rendering telehealth services, shall ascertain a facilitator's qualifications, training, and competence, as appropriate and reasonable, for each task a provider directs a facilitator to perform, and in the methodology and equipment a facilitator is to use.

(12) A facilitator may perform at a client site only the following tasks:

(A) a task for which a facilitator holds and acts in accordance with any relevant license, permit, or authorization required

or exemption available under the Texas Occupations Code to perform the task; and

(B) those physical, administrative, and other tasks for which a telehealth provider determines a facilitator is competent to perform in connection with the rendering of behavior analysis services for which no license, permit, or authorization under the Texas Occupations Code is required or to which an exemption applies.

(13) A telehealth provider shall be able to see and hear a client and a facilitator, if used, via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions, when providing telehealth services.

(14) A telehealth provider shall not render telehealth services to a client if the presence of a facilitator is required for safe and effective service to a client and no qualified facilitator is available.

(15) A telehealth provider shall document the provider's telehealth services to the same standard as in-person 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.

Filed with the Office of the Secretary of State on May 12, 2021.

TRD-202101854

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Effective date: June 1, 2021

Proposal publication date: December 4, 2020

For further information, please call: (512) 475-4879



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 155. RULES RELATING TO STANDARDS OF PRACTICE

22 TAC §155.3

The Texas Appraiser Licensing and Certification Board (TALCB) adopts new §155.3, Certain Uses of Logo or Name Prohibited, without changes to the proposed text as published in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1581). The rule will not be republished.

The new rule prohibits certain uses of the Board Logo and Name.

No comments were received on the new rule as published.

The new rule is adopted under Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

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 17, 2021.

TRD-202101959

Chelsea Buchholtz

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: June 6, 2021

Proposal publication date: March 12, 2021

For further information, please call: (512) 936-3652



CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER F. NEGOTIATED RULEMAKING

22 TAC §157.51

The Texas Appraiser Licensing and Certification Board (TALCB) adopts new rule §157.51, Petition for Adoption of Rules, with non-substantive changes to the rule as published in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1582). The rule will be republished.

The new rule 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.

No comments were received on the new rule as published.

The new rule is adopted under Texas Occupations Code §1103.154, which authorizes TALCB to adopt rules relating to professional conduct and Texas Government Code §2001.021, which requires state agencies to adopt by rule procedures for petitioning for the adoption of rules.

§157.51. 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 Board.

(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 Board 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 Board by:

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

(2) sending the petition via email to general.counsel@talcb.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 Executive Committee, in consultation with Board staff, shall review the petition and either:

(1) deny the petition in writing, stating the reasons for the denial and advising of other methods the interested person may communicate his or her concerns to the Board; 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 Board; or

(B) the appropriate Board committee.

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 17, 2021.

TRD-202101961

Chelsea Buchholtz

Commissioner

Texas Appraiser Licensing and Certification Board

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Proposal publication date: March 12, 2021

For further information, please call: (512) 936-3652



CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §159.155

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §159.155, Periodic Review of Appraisals, without changes to the proposed text as published in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1583). The rule will not be republished.

The amendments specify that an appraiser performing an appraisal review must perform a scope of work sufficient to ensure the appraisal subject to review complies with USPAP and remove specified requirements for a minimum scope of work.

One comment was received on the amendments as published. The commenter expressed concern regarding the expertise of those performing appraisal reviews for Appraisal Management Companies (AMCs). The AMC Advisory Committee considered this comment and recommended the Board adopt the amendments as published as the requirements for a person performing an appraisal review are already outlined in the statute and Appraiser Qualifications Board (AQB) guidelines.

The amendments are adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104.

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 17, 2021.

TRD-202101960

Chelsea Buchholtz

Commissioner

Texas Appraiser Licensing and Certification Board

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Proposal publication date: March 12, 2021

For further information, please call: (512) 936-3652



PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.16

At the May 7, 2021 meeting of the Texas Optometry Board, the Board moved unanimously to adopt new §273.16 without changes to the proposed text published in the March 5, 2021, issue of the *Texas Register* (46 TexReg 1452). The rule will not be republished. This rule creates clear requirements of a licensee's obligations during an investigation and/or inspection. This rule will increase the agency's ability to obtain relevant information in an investigation and/or inspection within a reasonable time frame in order to resolve matters in a timely manner.

No public comments were received.

The rule is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession.

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 11, 2021.

TRD-202101846

Kelly Parker

Executive Director

Texas Optometry Board

Effective date: May 31, 2021

Proposal publication date: March 5, 2021

For further information, please call: (512) 305-8502



CHAPTER 275. CONTINUING EDUCATION

22 TAC §275.2

At the May 7, 2021, meeting of the Texas Optometry Board, the Board moved unanimously to adopt amendments to rule 275.2(g)(3) with changes to the proposed text as published in the March 5, 2021, issue of the *Texas Register* (46 TexReg 1453). The Texas Optometry Board implemented a biennial renewal system as of January 1, 2021. The rule will be republished. The amended rule simply clarifies the requirements of the human trafficking requirement during the transition to the biennial license.

No public comments were received.

The amendment to Board Rule 275.2(g)(3) is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession.

§275.2. *Required Education.*

(a) Education for an advanced degree in optometric field or optometrically related field. One-hour credit will be given for each semester hour earned, and a total of 16 credit hours will be allowed for each full academic year of study.

(b) Research in lieu of training. Credit will be given only for full-time research. Sixteen credit hours will be given for each full year of research.

(c) Teaching. One credit hour is allowed for each education hour of teaching of board-approved continuing education courses.

(d) Continuing education courses. See §275.1(b) of this title (relating to General Requirements).

(e) Clinical rotations or rounds. One hour of continuing education credit will be given for each two clock hours spent on clinical rounds, for a maximum of four hours per calendar year. Beginning with the 2023 license renewal, credit will be given for a maximum of eight hours of clinical rotations or rounds hours taken during the two-year period preceding license renewal. Sponsoring organizations and universities must submit information regarding scheduled rounds and certify to the board at least on a quarterly basis the number of continuing education hours obtained.

(f) Credit will be given for a maximum of eight hours of the combined total of correspondence course hours and on-line computer course hours per calendar year. Beginning with the 2023 license renewal, credit will be given for a maximum of 16 hours of the combined total of correspondence course hours and on-line computer course hours taken during the two-year period preceding license renewal. On-line computer courses are those courses described in §275.1(b)(8) of this title. Correspondence courses must be sponsored and graded by accredited optometry colleges.

(g) Requirements for renewal of license imposed by other state law. A licensee that fails to timely meet these requirements may not renew the license.

(1) Two-hour controlled substances prescribing course. Section 481.07635 of the Health and Safety Code requires each active optometric glaucoma specialist licensed prior to September 1, 2020, to complete two hours of continuing education related to approved procedures of prescribing and monitoring controlled substances on or before September 1, 2021. Each active optometric glaucoma specialist licensed after September 1, 2020, must complete the continuing education required by this subsection within one year of the initial optometric glaucoma specialist license date. Licensees will receive two credit hours upon submission of written proof of completion of the approved course. This is a one-time education requirement. The taking of board-approved courses described in this subsection in subsequent years may satisfy the professional responsibility requirement of §275.1(b) of this title.

(2) One-hour opioid prescribing course. To renew a license for 2021 and subsequent years, §481.0764 of the Health and Safety Code requires all active licensees who prescribe or dispense opioids to take each year a one-hour board-approved continuing education course covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy,

psychotherapy, and other treatments. Licensees will receive one credit hour upon submission of written proof of completion of the approved course.

(3) One-hour human trafficking course. Not later than January 1, 2021, all active licensees who provide direct patient care must submit proof of completion of a one-hour human trafficking course approved by the Texas Health and Human Services Commission as required by §116.002 of the Occupations Code. Commencing effective January 1, 2022, all active licensees who provide direct patient care shall complete one-hour of human trafficking continuing education prior to each biennial renewal as required by §116.003 of the Occupations Code. The courses taken to satisfy the human trafficking requirement shall include information on identifying and assisting victims of human trafficking and be approved by the Texas Health and Human Services Commission.

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 11, 2021.

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Kelly Parker

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8502



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

SUBCHAPTER B. LICENSING REQUIREMENTS

22 TAC §463.10

The Texas Behavioral Health Executive Council adopts amended §463.10, relating to Licensed Psychologists. Section 463.10 is adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1162) and will not be republished.

Reasoned Justification.

Section 463.10(b)(3)(B) required applicants with a doctoral degree conferred prior to January 1, 1979, that intend to apply for licensure under the substantial equivalence clause to provide information regarding the instructors in the courses submitted as substantially equivalent. Substantial equivalence of the degree's courses is evaluated but the instructors for the courses are not. Therefore, this part of the rule is unnecessary and has been repealed.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see

§507.153 of the Tex. Occ. Code. The amended rule pertains to the qualifications necessary to obtain a license to practice psychology; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires

state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on May 12, 2021.

TRD-202101864

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: June 1, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 305-7706



SUBCHAPTER F. PROFESSIONAL DEVELOPMENT

22 TAC §463.35

The Texas Behavioral Health Executive Council adopts amended §463.35, relating to Professional Development. Section 463.35 is adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1165) and will not be republished.

Reasoned Justification.

Currently §463.35(a) requires a minimum of 40 hours of professional development be completed during each license renewal period. Part of §463.35(e) required professional development activities not to be used for credit in more than one renewal period. This part of §463.35(e) was redundant and unnecessary and is therefore repealed.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to continuing education requirements for a license to practice psychology; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on May 12, 2021.

TRD-202101866

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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Proposal publication date: February 19, 2021

For further information, please call: (512) 305-7706



SUBCHAPTER G. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

22 TAC §463.40

The Texas Behavioral Health Executive Council adopts the repeal §463.40, relating to Ineligibility Due to Criminal History. Section 463.40 is repealed without changes to the text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1167) and will not be republished. This adopted repeal corresponds with the adoption of a new rule elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of this rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. This adopted repeal standardizes the Executive Council and all other Board rules regarding the licensing of persons with criminal convictions. The Executive Council has adopted a new rule, in this edition of the *Texas Register*, which concern the same subject matter, details, and requirements found in this rule, therefore the repeal of this rule is necessary.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The repeal pertains to the qualifications necessary to obtain a license to practice psychology; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt this repeal.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are

reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule or repeal regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule or repeal has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this repeal.

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: June 1, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 305-7706



22 TAC §463.40

The Texas Behavioral Health Executive Council adopts new §463.40, relating to Licensing of Persons with Criminal Convictions. Section 463.40 is adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1168) and will not be republished.

Reasoned Justification.

The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and

507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. This new rule is intended to standardize the Executive Council and all Board rules regarding the licensing of persons with criminal convictions.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The new rule pertains to the qualifications necessary to obtain a license to practice psychology; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



CHAPTER 465. RULES OF PRACTICE

22 TAC §465.1

The Texas Behavioral Health Executive Council adopts amended §465.1, relating to Definitions. Section 465.1 is adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1170) and will not be republished.

Reasoned Justification.

Section 465.1(12) defined the term "professional standards", but this definition was not utilized in 22 Texas Administrative Code Chapter 465 and the definition provided by the rule did not provide much clarification or guidance. Therefore, this defined term was unnecessary and it has been repealed.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to the scope of practice, standards of care, or ethical practice for the practice of psychology; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
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Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706



22 TAC §465.2

The Texas Behavioral Health Executive Council adopts amended §465.2, relating to Supervision. Section 465.2 is adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1172) and will not be republished.

Reasoned Justification.

Currently the rule allows licensees to provide supervision by remote or electronic means if it is synchronous, e.g. live audiovisual means. The amended rule will still allow for all supervision to be conducted by synchronous remote or electronic means but up to half of the required supervision may be conducted by asynchronous means, e.g. email.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to the scope of practice, standards of care, or ethical practice for the practice of psychology; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY SUBCHAPTER B. CERTIFICATION BY EXAMINATION

22 TAC §511.21

The Texas State Board of Public Accountancy adopts an amendment to §511.21, concerning Examination Application, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1826). The rule will not be republished.

The amendment eliminates the requirement for a social security number in an application to take the CPA exam and identifies the Department of Public Safety as the Texas Department of Public Safety.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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TRD-202101884

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.22

The Texas State Board of Public Accountancy adopts an amendment to §511.22, concerning Initial Filing of the Application of Intent, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1827). The rule will not be republished.

The amendment will eliminate unnecessary duplication of language regarding social security numbers as a part of the application of intent.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.51

The Texas State Board of Public Accountancy adopts an amendment to §511.51, concerning Educational Definitions, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1828). The rule will not be republished.

The Board no longer addresses distance education and is eliminating the related definitions in the Board's rules and is defining what the Board considers upper division course work.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.52

The Texas State Board of Public Accountancy adopts an amendment to §511.52, concerning Recognized Institutions of Higher Education, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1830). The rule will not be republished.

It serves no purpose to identify both national and regional accrediting associations because the accrediting is the same for both. The rule also recognizes graduate courses offered by certain community colleges.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842



22 TAC §511.53

The Texas State Board of Public Accountancy adopts an amendment to §511.53, concerning Evaluation of International Education Documents, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1831). The rule will not be republished.

The amendment recognizes that the Board no longer addresses distance education and renames out of country education as international education.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.54

The Texas State Board of Public Accountancy adopts an amendment to §511.54, concerning Recognized Texas Community Colleges, with changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1832). The rule will be republished.

The amendment eliminates the reference to distance education which is no longer addressed by the Board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§511.54. Recognized Texas Community Colleges.

(a) An applicant who has completed a baccalaureate or higher degree from a board recognized institution of higher education based

on the requirements of §511.52 of this chapter (relating to Recognized Institutions of Higher Education), may enter into a course of study at a board recognized Texas community college to complete the educational requirements of §511.57 and §511.58 of this chapter (relating to Qualified Accounting Courses and Definitions of Related Business Subjects and Ethics Courses).

(b) The board recognizes and accepts Texas community colleges that meet board standards for a comprehensive academic program based on the educational requirements of §511.57 and §511.58 of this chapter.

(c) Effective August 1, 2015, the standards include at a minimum all, but are not limited to, the following:

(1) The Texas community college must be accredited by SACS.

(2) Academic accounting and business courses recognized to meet §511.57 and §511.58 of this chapter are deemed by the board as equivalent to upper level coursework at an institution of higher education and must contain a rigorous curriculum that is similar to courses offered in a baccalaureate degree program at a university. Accounting, business, and ethics courses must be developed by a group of full time accounting faculty members and approved by the board prior to offering to students. Modifications to an approved course must be reconsidered by the board prior to offering to students.

(3) Academic courses meeting §511.57 and §511.58 of this chapter must be taken after completing a baccalaureate degree.

(4) The Texas community college must offer:

(A) 30 semester hours of academic accounting courses meeting §511.57 of this chapter;

(B) 24 semester hours of academic business courses meeting §511.58 of this chapter; and

(C) a board-approved three semester hour ethics course meeting §511.58(c) of this chapter.

(5) The Texas community college designates an accounting faculty member(s) who is responsible for:

(A) managing the comprehensive academic program at all campuses;

(B) selecting and training qualified faculty members to teach the program courses and regularly evaluating their effectiveness in the classroom;

(C) establishing and maintaining a rigorous program curriculum;

(D) establishing and maintaining a process for advising and guiding students through the program; and

(E) providing annual updates to the board on the status of the academic program.

(6) Faculty members at a community college recognized and accepted by the board must have the following credentials to teach academic courses meeting §511.57 and §511.58 of this chapter:

(A) Doctorate or master's degree in the teaching discipline; or

(B) Master's degree with a concentration in the teaching discipline (a minimum of 18 graduate semester hours in the teaching discipline).

(7) At least three-fourths of the faculty members who are responsible to teach academic courses meeting §511.57 of this chapter must hold a current CPA license.

(8) Faculty members will comply with the established educational definitions in §511.51 of this chapter (relating to Educational Definitions).

(9) The Texas community college will provide ongoing professional development for its faculty as teachers, scholars, and CPA practitioners.

(10) The Texas community college will make available to students a resource library containing current online authoritative literature to support the academic courses meeting §511.57 and §511.58 of this chapter, and will incorporate the online authoritative literature in accounting courses.

(d) A community college recognized and accepted by the board under this provision must be reconsidered by the board on the fifth-year anniversary of the approval. Information brought to the attention of the board by a student or faculty member of the Texas community college that indicates non-compliance with the standards may cause the board to accelerate reconsideration.

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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.56

The Texas State Board of Public Accountancy adopts an amendment to §511.56, concerning Educational Qualifications under the Act, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1834). The rule will not be republished.

This is a relocation of a statutory standard, regarding eligibility to take the CPA exam, to help the reader in better understanding the standard.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.57

The Texas State Board of Public Accountancy adopts an amendment to §511.57, concerning Qualified Accounting Courses. The amendment is adopted without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1835). The rule will not be republished.

The amendment changes "Title" to "Chapter" to focus the citation of the rule, identify the correct subsections in this rule, eliminates the reference to distance learning and revises the minimum number of hours, courses and training required to take the CPA exam, effective January 1, 2024.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.58

The Texas State Board of Public Accountancy adopts an amendment to §511.58, concerning Definitions of Related Business Subjects and Ethics Courses, without changes to the proposed text as published in the March 26, 2021 issue of the *Texas Register* (46 TexReg 1837). The rule will not be republished.

The amendment revises the language from "accredited" to "recognized" by the Board in order to be consistent with other Board rules and requires the required ethics course to be a standalone course as opposed to ethics being integrated in and along with other courses. Also notifies the public that the Board may be reviewing the courses to assure compliance with Board standards.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which

provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.59

The Texas State Board of Public Accountancy adopts an amendment to §511.59, concerning Definition of 150 Semester Hours, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1839). The rule will not be republished.

The amendment emphasizes the need to complete 150 semester hours to be eligible to take the CPA exam and that the undergraduate and graduate internship hours may be applied toward the 150 hours requirement.

Comment

The Board received one comment on the proposed rule revision limiting credit to three semester credit hours from an undergraduate business internship and three semester credit hours to graduate business internship toward the required 150 semester hours. Commenter believed that this limitation would cause undue expense and hardship to students seeking to obtain the 150 semester hours credit to take the UCPAE.

Response

The Board does not agree with the comment. The additional three hours needed to take the exam can be applied from the internship class that the school awards six hours. Three of the six hours of internship can be applied toward the accounting requirement to take the UCPAE. This prevents the student from losing credit for those hours.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



SUBCHAPTER D. CPA EXAMINATION

22 TAC §511.70

The Texas State Board of Public Accountancy adopts an amendment to §511.70, concerning Grounds for Disciplinary Action of Applicants. The amendment is adopted without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1840). The amended rule will not be republished.

Recording devices is being added to the list of items not permitted to be brought into the CPA exam testing site by the exam applicant.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.72

The Texas State Board of Public Accountancy adopts an amendment to §511.72, concerning Uniform Examination, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1841). The rule will not be republished.

A redraft of the rule to make it clear that the exam may be offered at the Board's offices and at a facility established by NASBA. The revision makes it clear that the Board ultimately has the responsibility for the structure, security and monitoring of the exam.

Comment

The Board received two letters commenting on the need to identify the four sections of the UCPAE that will take effect in 2024.

Response

The Board did not agree that the rule should be revised at this time. The Board decided to retain the four exam sections in the rule until the new exam format is completed which is projected for 2024. Addressing it in the rule now might create some confusion.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.76

The Texas State Board of Public Accountancy adopts an amendment to §511.76, concerning Examination Refund Policy, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1842). The rule will not be republished.

The amendment adds sibling to the list of persons identified as immediate family in regard to the applicant seeking a refund of the exam fees due to hardship related to the applicant's immediate family.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.77

The Texas State Board of Public Accountancy adopts an amendment to §511.77, concerning Scoring, without changes to the

proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1843). The rule will not be republished.

Non-substantive revisions are being proposed to provide consistency of terminology and to advise that applicants will be advised ahead of time of the general success rate of a score review.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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For further information, please call: (512) 305-7842



22 TAC §511.80

The Texas State Board of Public Accountancy adopts an amendment to §511.80, concerning Granting of Credit, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1844). The rule will not be republished.

The amendment provides the Board with the flexibility to examine each individual situation to determine how exam credit may be awarded in the event the AICPA restructures the exam.

No comments were received regarding adoption of the amendment.

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) 305-7842



22 TAC §511.82

The Texas State Board of Public Accountancy adopts an amendment to §511.82, concerning Application for Transfer of Credits, without changes to the proposed text as published in the March

26, 2021, issue of the *Texas Register* (46 TexReg 1845). The rule will not be republished.

The amendment makes it clear that it is the applicant's responsibility to obtain the exam scores and credits earned by the applicant from another licensing authority when attempting to transfer those credits and scores to the Board and the applicant must meet all Board rules at the time the credits were earned.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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For further information, please call: (512) 305-7842



22 TAC §511.83

The Texas State Board of Public Accountancy adopts an amendment to §511.83, concerning Granting of Credit by Transfer of Credit, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1846). The rule will not be republished.

Grammatical changes are being adopted.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy

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Proposal publication date: March 26, 2021

For further information, please call: (512) 305-7842



22 TAC §511.87

The Texas State Board of Public Accountancy adopts an amendment to §511.87, concerning Loss of Credit, without changes to the proposed text as published in the March 26, 2021 issue of the *Texas Register* (46 TexReg 1847). The rule will not be republished.

The term testing "windows" is being replaced by testing "quarters" to be consistent with other sections of the Board rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.91

The Texas State Board of Public Accountancy adopts an amendment to §511.91, concerning Board Responsibilities Regarding Requested Accommodations, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1848). The rule will not be republished.

The term "disabilities" is being removed as unnecessary language.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842

◆ ◆ ◆
22 TAC §511.92

The Texas State Board of Public Accountancy adopts an amendment to §511.92, concerning Definitions, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1849). The rule will not be republished.

The Americans with Disabilities Act as amended in 2008 is cited in order to assure the definition of "major life activities" is properly defined as found in the ADA as amended.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842

◆ ◆ ◆
22 TAC §511.93

The Texas State Board of Public Accountancy adopts an amendment to §511.93, concerning Applicant's Responsibility for Requesting Accommodations, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1850). The rule will not be republished.

The term "disabilities" is deleted from the title of the section as unnecessary.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842

◆ ◆ ◆
22 TAC §511.94

The Texas State Board of Public Accountancy adopts an amendment to §511.94, concerning Documentation of the Need for an Accommodation, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1851). The rule will not be republished.

The amendment deletes the term "regionally" accredited institution in order to not limit institutions to only those within the Texas region so long as they are accredited.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842

◆ ◆ ◆
22 TAC §511.96

The Texas State Board of Public Accountancy adopts an amendment to §511.96, concerning Appeal from Denial of Request, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1853). The rule will not be republished.

The amendment eliminates the requirement that the Board provide a response to the denial of an appeal within 30 days. There may be extenuating circumstances that requires greater than 30 days to evaluate the appeal.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



SUBCHAPTER E. VENDOR REQUIREMENTS

22 TAC §511.102

The Texas State Board of Public Accountancy adopts the repeal of §511.102, concerning CPA Examination Availability, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1854). The rule will not be republished.

CPA examination testing will no longer be on designated days and the language providing for their designation is being eliminated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.103

The Texas State Board of Public Accountancy adopts an amendment to §511.103, concerning Examination Scheduling, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1855). The rule will not be republished.

The Board is recommending that the applicant schedule at least five days in advance of the test date.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

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For further information, please call: (512) 305-7842



22 TAC §511.104

The Texas State Board of Public Accountancy adopts an amendment to §511.104, concerning Test Center Locations, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1856). The rule will not be republished.

Grammatical changes are being made, and the applicants are made aware of how they can find the test center locations.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

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For further information, please call: (512) 305-7842



22 TAC §511.105

The Texas State Board of Public Accountancy adopts an amendment to §511.105, concerning Test Center Check-In, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1857). The rule will not be republished.

The method of identifying the test taker is set out in this rule and permits NASBA to determine methods of identification.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.106

The Texas State Board of Public Accountancy adopts an amendment to §511.106, concerning Compliance with Test Center Rules, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1858). The rule will not be republished.

The amendment provides that the Board may impose sanctions against a test taker for violating the rules of taking a test.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.107

The Texas State Board of Public Accountancy adopts an amendment to §511.107, concerning No-Show, Late Arrival and Late Cancellation, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1858). The rule will not be republished.

The amendment makes the test taker aware that they may change the scheduled date of testing by going to the vendor's website.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



SUBCHAPTER F. EXPERIENCE REQUIREMENTS

22 TAC §511.121

The Texas State Board of Public Accountancy adopts an amendment to §511.121, concerning Application for Approval of Experience, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1859). The rule will not be republished.

The amendment is grammatical.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.122

The Texas State Board of Public Accountancy adopts an amendment to §511.122, concerning Acceptable Work Experience, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1860). The rule will not be republished.

The experience required to become a CPA must be from a properly licensed CPA in a properly licensed CPA firm. The revision also puts the public on notice that an internship may not be counted toward both their education requirements and the experience requirements needed to become a CPA.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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For further information, please call: (512) 305-7842



22 TAC §511.123

The Texas State Board of Public Accountancy adopts an amendment to §511.123, concerning Reporting Work Experience, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1862). The rule will not be republished.

The amendment correctly cites the whole rule as applying to the experience to become a CPA requirement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.124

The Texas State Board of Public Accountancy adopts an amendment to §511.124, concerning Acceptable Supervision, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1863). The rule will not be republished.

In order for the Board to accept an applicant's work experience in the client practice of public accountancy, the CPA firm and the licensee where the work experience is obtained must be licensed and in good standing with this Board or another licensing board of accountancy recognized by this Board. It also requires the applicant to provide a set of fingerprints in accordance with the Public Accountancy Act and the Board's regulations.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



SUBCHAPTER H. CERTIFICATION

22 TAC §511.161

The Texas State Board of Public Accountancy adopts an amendment to §511.161, concerning Qualifications for Issuance of a Certificate, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1865). The rule will not be republished.

The amendment requires the applicant to provide a set of fingerprints in accordance with the Public Accountancy Act and the Board's regulations.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which

provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §511.162

The Texas State Board of Public Accountancy adopts an amendment to §511.162, concerning Application for Issuance of the Certificate by Exam After Completion of the CPA Examination, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1866). The rule will not be republished.

The amendment is grammatical and not substantive.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



CHAPTER 513. REGISTRATION

SUBCHAPTER A. REGISTRATION OF CPAS AND PERSONS HOLDING SIMILAR TITLES IN FOREIGN COUNTRIES

22 TAC §513.1

The Texas State Board of Public Accountancy adopts an amendment to §513.1, concerning Registration of Foreign Practitioners

with Substantially Equivalent Qualifications, with changes to the proposed text as published in the January 29, 2021, issue of the *Texas Register* (46 TexReg 697). The rule will be republished.

The amendment is removing the restriction to registering as a foreign accountant pursuant to §901.355 of the Texas Public Accountancy Act.

Comment: The Board received one comment suggesting that individuals with foreign credentials should be permitted to register pursuant to §901.355 of the Public Accountancy Act (Act).

Response: The Board is in agreement with the comment and is deleting subsection (e) of the rule that suggested individuals could no longer register in accordance with §901.355 of the Act.

The amendment clarifies that all foreign licensees having been registered to practice in Texas pursuant to §901.355 of the Act may continue to practice in Texas as a registrant. It also deletes subsection (e) in the rule which suggests that a registrant under §901.355 must apply for reciprocity pursuant to §901.260.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§513.1. Registration of Foreign Practitioners with Substantially Equivalent Qualifications.

(a) An individual who holds a valid certificate or other credential issued by a foreign jurisdiction that allows the individual to practice public accountancy in the issuing jurisdiction may, if that certificate or credential remains in good standing in the issuing jurisdiction, be registered with the board.

(b) A foreign practitioner registered with the board shall be allowed to use the title "Certified Public Accountant of _____" (indicating the foreign jurisdiction that issued his credential), or may use the title held in the foreign jurisdiction that issued his credential, provided that the foreign jurisdiction is indicated. This title may not be used unless followed by the name of the foreign jurisdiction.

(c) A foreign practitioner registered with the board must comply with the board's Code of Professional Conduct.

(d) A foreign practitioner registered with the board must renew his registration and license annually in the manner provided for renewal of a license in the Act. The registered foreign practitioner must submit a certificate verifying the continued existence of his foreign certificate or other credential in good standing from the foreign jurisdiction of origin with each renewal. A registration and license issued under §901.355 of the Act (relating to Registration for Certain Foreign Applicants) is automatically revoked if the foreign practitioner does not continue to hold a current certificate or other credential from the foreign jurisdiction of origin.

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-202101919

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842



CHAPTER 515. LICENSES

22 TAC §515.4

The Texas State Board of Public Accountancy adopts an amendment to §515.4, concerning License Expiration, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1867). The rule will not be republished.

This repeats in the rule the Board's authority to discipline licensees failing to be fingerprinted pursuant to the provision of the Texas Public Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on May 13, 2021.

TRD-202101920
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: June 2, 2021
Proposal publication date: March 26, 2021
For further information, please call: (512) 305-7842



22 TAC §515.8

The Texas State Board of Public Accountancy adopts an amendment to §515.8, concerning Retired or Disability Status, without changes to the proposed text as published in the February 12, 2021, issue of the *Texas Register* (46 TexReg 1021). The rule will not be republished.

Board Rule 515.8 currently provides for applying for retirement status with a form. The amendment provides for an electronic application.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on May 13, 2021.

TRD-202101921
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: June 2, 2021
Proposal publication date: February 12, 2021
For further information, please call: (512) 305-7842



PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER B. RULES OF PRACTICE

22 TAC §781.312

The Texas Behavioral Health Executive Council adopts amended §781.312, relating to Licensees and the Council. Section 781.312 is adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1177) and will not be republished.

Reasoned Justification.

The amended rule repeals the requirement that licensees report any and all employment setting changes to the Executive Council. The Executive Council does not utilize this information; therefore, this requirement is no longer necessary.

If a rule will pertain to the scope of practice, standards of care, or ethical practice for a profession then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to the scope of practice, standards of care, and ethical practice for social workers; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on May 12, 2021.

TRD-202101874

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: June 1, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 305-7706



SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §781.803

The Texas Behavioral Health Executive Council adopts amended §781.803, relating to Severity Levels. Section 781.803 is adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1178) and will not be republished.

Reasoned Justification.

Former §781.806 has now been repealed; therefore, the reference to this rule found in §781.803(4) is unnecessary and this adopted amendment removes all references to this repealed rule.

If a rule will pertain to a schedule of sanctions for a profession then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to a schedule of sanctions for social workers; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on May 12, 2021.

TRD-202101875

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: June 1, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 305-7706



22 TAC §781.805

The Texas Behavioral Health Executive Council adopts amended §781.805, relating to Schedule of Sanctions. Section 781.805 is adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1180) and will not be republished.

Reasoned Justification.

The adopted amendment to §781.805 is necessary because elsewhere in this edition of the *Texas Register* an amendment to §781.312(c) is also adopted. Therefore, a corresponding amendment to the schedule of sanctions is necessary.

If a rule will pertain to a schedule of sanctions for a profession then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to a schedule of sanctions for social workers; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on May 12, 2021.

TRD-202101876

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: June 1, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 305-7706



CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER B. LICENSE

22 TAC §882.21

The Texas Behavioral Health Executive Council adopts amended §882.21, relating to License Statuses. Section 882.21 is adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1181) and will not be republished.

Reasoned Justification.

The amended rule removes the requirement for licensees to return their renewal certificate if they elect to change to inactive status. The printing and mailing of renewal permits have been discontinued by the Executive Council; verification of licensure status can be done online. Therefore, the requirement for returning a renewal permit to be placed on inactive status found in former §882.21(b)(1) is unnecessary and has been amended accordingly.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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TRD-202101871

Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Effective date: June 1, 2021
Proposal publication date: February 19, 2021
For further information, please call: (512) 305-7706



SUBCHAPTER E. CONTINUING EDUCATION

22 TAC §882.50

The Texas Behavioral Health Executive Council adopts amended §882.50, relating to Continuing Education and Audits. Section 882.50 is adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1183) and will not be republished.

Reasoned Justification.

The amended rule will reduce the monthly amount of licensees that are selected for continuing education audit from 10% to 5%. The Executive Council believes this change is necessary so that staff can effectively and efficiently conduct these audits which will ensure licensees are completing the required continuing education for the renewal of a license.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on May 12, 2021.

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

**CHAPTER 213. AREA AGENCIES ON AGING
SUBCHAPTER C. IMPLEMENTATION OF
THE OLDER AMERICANS ACT**

The Texas Health and Human Services Commission (HHSC) adopts amendments to §213.101, concerning Definitions, and §213.203, concerning Nutrition Services.

Section 213.101 is adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1184). This rule will not be republished.

Section 213.203 is adopted with changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1184). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amended rules is to ensure the rules are consistent with requirements of the Older Americans Act, 42 U.S.C. §§3001-3058ff. The current rules are more restrictive than federal law. The changes will allow area agencies on aging (AAAs) more flexibility when providing home delivered meal services to eligible persons. The flexibilities will reduce the need for AAAs to submit several waiver requests to HHSC for approval, thus streamlining the service delivery process. Agency specific policy is removed from the rule and included by reference. In addition, the rule is reorganized for clarity, readability, and consistency.

COMMENTS

The 31-day comment period ended March 22, 2021.

During this period, HHSC received comments regarding the proposed rules from four commenters: Meals on Wheels of Central Texas, the Texas Association of Regional Councils, the Texas Association of Area Agencies on Aging, and the Meals on Wheels Association of Texas. One commenter expressed support for the adoption of the rules overall. None of the other commenters expressed opposition to the adoption of the rules. However, each commenter requested that the adopted rules include changes to the text of the proposed rules. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Commenters recommended modifying the definitions of "subcontractor," "subrecipient," "contract," "contractor," "agreement," "vendor agreement," and "vendor" in §213.101 to mirror the definitions found in federal guidance. Commenters also recommend changing how these terms are used in the rules to be consistent with federal guidance.

Response: HHSC cannot make these changes at this time. The definitions apply to all the rules in Chapter 213. To make these

changes, HHSC will have to amend all the rules in the chapter that use these terms, which is outside the scope of this rule project.

Comment: Regarding the terms "electronic monitoring system," "ERS," and "responder" defined in §213.101, commenters requested clarification as to how these terms are relevant to home delivered meals.

Response: No changes are made to the adopted rules based on this comment. The terms "electronic monitoring system," "ERS," and "responder" are not related to home delivered meals. They are related to emergency response services, which is covered in 26 TAC §213.213. The definitions in §213.101 cover all the rules in Chapter 213.

Comment: One commenter recommended changing §213.203(d) to permit either a AAA or a meal provider to conduct the required nutrition screening for a person receiving a nutrition service. The proposed rule requires the AAA to ensure the meal provider conducts the nutrition screening.

Response: HHSC agrees with the suggested change and has incorporated the change into the adopted rule.

Comment: Regarding the nutrition screening requirement in §213.203(d) commenters suggested that the term "nutrition screening" be changed to "nutrition risk screening".

Response: HHSC declines to change the rule in response to this comment. Nutrition screening encompasses nutrition risk screening, and the Older Americans Act uses the term "nutrition screening."

Comment: One commenter recommended changing §213.203(g) to permit either a AAA or a meal provider who delivers other than hot meals or who delivers multiple meals at one time to complete an assessment to determine that the person can safely manage the type of meals to be delivered. The proposed rule requires the AAA to ensure that the meal provider completes the assessment.

Response: HHSC agrees with the suggested change and has incorporated the change into the adopted rule.

Comment: One commenter stated that the Determination of Type of Meal assessment required by §213.203(g) duplicates the nutritional assessment, resulting in inefficient use of staff time and limited resources.

Response: HHSC disagrees with this comment. The questions on the Determination of Type of Meal assessment are specific to the person's ability to safely handle and store meals, other than hot meals, and physically manage multiple meals delivered at one time.

Comment: Commenters suggested that §213.203(i) be changed to state, "A AAA or subrecipient" must ensure a meal provider complies with Older Americans Act §311 (42 U.S.C. §3030a), regarding the Nutrition Services Incentive Program and reports only eligible meals to HHSC. As proposed, §213.203(i) requires the AAA to ensure the meal provider complies with these requirements.

Response: HHSC disagrees and declines to make this change. The rule applies to the AAAs, not to contractors and subrecipients.

Comment: One commenter opposes deleting from the rules the requirement that a AAA ensure a meal provider does not leave meals unattended at a program participant's residence. The

commenter also opposes deleting from the rules the requirement that a AAA ensure a meal provider follows-up the same day with a program participant who was not available when meal delivery was attempted.

Response: HHSC declines to change this rule in response to this comment. These requirements are now located in the AAA Policies and Procedures Manual, which is being adopted by reference in the rule. As proposed, §213.203(t) requires AAAs to comply with, and ensure meal providers comply with, all applicable OAA requirements and the requirements in the AAA Policies and Procedures Manual.

Comment: One commenter opposes deleting the requirements currently in §213.203(o)(1)(A)-(C) and (o)(2)(A)-(B) that a AAA ensure a meal provider provides certain training for its staff and volunteers.

Response: HHSC declines to change this rule in response to this comment. These training requirements are now located in the AAA Policies and Procedures Manual, which is being adopted by reference in the rule.

HHSC also made a minor change to remove an extra semi-colon from §213.203(k)(2).

DIVISION 1. DEFINITIONS

26 TAC §213.101

STATUTORY AUTHORITY

The amendment 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 Human Resources Code §101A.051, which provides that the Executive Commissioner of HHSC shall adopt rules regarding the administration of programs and services for older adults.

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 14, 2021.

TRD-202101947

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: June 3, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 206-4581



DIVISION 3. OLDER AMERICANS ACT SERVICES

26 TAC §213.203

STATUTORY AUTHORITY

The amendment 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 Human Resources Code §101A.051, which provides that the Executive Commissioner of HHSC shall adopt rules regarding the administration of programs and services for older adults.

§213.203. Nutrition Services.

(a) Purpose. This section establishes the requirements for nutrition services, a service provided under Older Americans Act and funded, in whole or in part, by HHSC.

(b) Policy. Nutrition services must be provided in compliance with all HHSC policies established by authority of Older Americans Act §305(a)(1)(C) (42 U.S.C. §3025(a)(1)(C)), relating to organization and responsibilities of the State.

(c) Eligibility and assessment. A AAA must ensure that a person who receives a nutrition service is:

(1) 60 years of age or older; or

(2) eligible in accordance with Older Americans Act §339(2)(H) (42 U.S.C. §3030g-21(2)(H)) and §339(2)(I) (42 U.S.C. §3030g-21(2)(I)) and assessed for eligibility as required by Older Americans Act §339(2)(J) (42 U.S.C. §3030g-21(2)(J)) and the AAA Policies and Procedures Manual.

(d) Nutrition screening. A AAA must conduct or ensure a meal provider conducts nutrition screening for a person receiving a nutrition service as required by Older Americans Act §339(2)(J) (42 U.S.C. §3030g-21(2)(J)).

(e) Meal requirements. A AAA must ensure that a meal provider serves meals that comply with Older Americans Act §339(2)(A) (42 U.S.C. §3030g-21(2)(A)), relating to Dietary Guidelines for Americans, dietary reference intakes, and adjustments to meet special dietary needs of persons receiving nutrition services, and with the AAA Policies and Procedures Manual policies related to menus, standard recipes, and approval of menus.

(f) Service days. A AAA must ensure that meals are provided in accordance with Older Americans Act §331 (42 U.S.C. §3030e) and §336 (42 U.S.C. §3030f), and with the AAA Policies and Procedures Manual policies, related to serving fewer than five meals a week.

(g) Delivery of multiple meals. A AAA must complete or ensure that a meal provider completes a Determination of Type of Meal assessment in compliance with the AAA Policies and Procedures Manual for each person who receives other than hot meals or receives multiple meals at one time to determine the person can safely handle the type of meals to be delivered.

(h) Facilities and food service. A AAA must ensure that a meal provider:

(1) complies with 25 TAC Chapter 228 (relating to Retail Food) and 25 TAC Chapter 229 (relating to Food and Drug) in training staff, and the preparation, handling, and delivery of food; and

(2) provides a copy of all facility inspection results required by state law or rule to the AAA.

(i) Nutrition Services Incentive Program. A AAA must ensure that a meal provider:

(1) complies with the Older Americans Act §311 (42 U.S.C. §3030a), relating to the Nutrition Services Incentive Program; and

(2) includes eligible meals in reports to HHSC through which Nutrition Services Incentive Program cash is calculated as earned for distribution to AAAs.

(j) Voluntary contributions. A AAA must ensure that a meal provider complies with Older Americans Act §315(b) (42 U.S.C. §3030c-2(b)), §213.151(l) of this chapter (relating to AAA Administrative Responsibilities), and the AAA Policies and Procedures Manual policies relating to voluntary contributions.

(k) Meal cost recovery. A AAA must ensure that a meal provider:

(1) posts the cost of a meal for purposes of cost recovery as described in paragraph (2) of this subsection;

(2) recovers, at a minimum, the cost of a meal that is served to a person who is not eligible for a meal funded by the Older Americans Act; and

(3) keeps payments for a meal served to an ineligible person separate from voluntary contributions from an eligible person.

(l) Holding time. A AAA must ensure that a meal provider complies with state and local laws for the safe and sanitary handling of food.

(1) A AAA must ensure that a congregate meal provider does not allow more than four hours to expire from the time the provider:

(A) removes hot food from temperature control and the time the provider serves the hot food; or

(B) removes cold food from temperature control and the time the provider serves the cold food.

(2) A AAA must ensure that a home delivered meal provider limits the amount of time meals are in transit and does not allow more than four hours to expire from the time the provider:

(A) removes hot food from temperature control and the time the provider delivers the hot food; or

(B) removes cold food from temperature control and the time the provider delivers the cold food.

(m) Nutrition outreach. A AAA must ensure that a meal provider develops and maintains a written outreach plan giving priority to people described in the Older Americans Act §306(a)(1) (42 U.S.C. §3026(a)(1)).

(n) Nutrition education. In accordance with the Older Americans Act §339(2)(J) (42 U.S.C. §3030g-21(2)(J)), a AAA must ensure that an eligible person is provided with nutrition education annually and, if appropriate, nutrition counseling.

(o) Political activity. A AAA must ensure that a meal provider does not:

(1) use a congregate meal site for political campaigning except in those instances where a representative from each political party running in the campaign is given an equal opportunity to participate; or

(2) distribute political materials at a congregate meal site.

(p) Religious activities and prayer. A AAA must ensure that a meal provider does not:

(1) allow a prayer or other religious activity to be officially sponsored, led, or organized by a staff person of a congregate meal site; or

(2) prohibit a person from praying silently or audibly at a congregate meal site if the person so chooses.

(q) Monitoring.

(1) A AAA must monitor meal providers in compliance with 40 TAC §83.19(f), §213.151(e) of this chapter, and the AAA Policies and Procedures Manual.

(2) A AAA must ensure that the Department of State Health Services or the local health authority, as applicable, monitors a food preparation site, at least annually.

(3) A AAA must ensure that the meal provider submits the written report of the food preparation site monitoring to the AAA.

(r) Emergencies and disasters. A AAA must ensure that a meal provider develops a plan and written procedures for emergencies and disasters to keep food, facilities, and equipment available to the extent possible, for people participating in the nutrition services program, in accordance with the AAA Policies and Procedures Manual policies giving priority to people 60 years of age or older.

(s) Subcontracting by a meal provider. A AAA must require a meal provider to obtain written approval from the AAA before the meal provider contracts with any entity for meal preparation or service delivery.

(t) Adoption by reference. HHSC adopts by reference as requirements for nutrition services the following:

(1) OAA §§306(a)(1) (42 U.S.C. §3026(a)(1)), 311(42 U.S.C. §3030a), 315(b) (42 U.S.C. §3030c-2(b)), 331(42 U.S.C. §3030e), 336(42 U.S.C. §3030f, and 339(2) (42 U.S.C. §3030g-21(2)), as amended through Public Law 116-131, enacted March 25, 2020; and

(2) the AAA Policies and Procedures Manual, adopted effective January 15, 2021.

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 14, 2021.

TRD-202101948

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: June 3, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 206-4581

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.39, §5.49

The Comptroller of Public Accounts adopts amendments to §5.39, concerning hazardous duty pay, and §5.49, concerning longevity pay, without changes to the proposed text as published in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1603). The rules will not be republished.

The amendments to §5.39 update the format of the definitions in subsection (a) to present them in the same format as other definitions listed in Chapter 5; delete the definitions of institution of higher education and TYC in subsection (a) because they are no longer used in this section; add definitions of calendar month, day, TABC, TJJD, and TPWD in subsection (a); change TYC to

TJJD in subsections (b), (c), and (f) to reflect the current name of the agency; update the definition of "state employee" in subsection (b)(2)(A) as it applies to individuals employed by TJJD to reflect changes made by the legislature in House Bill 3689, 86th Legislature (2019); change 12 month to 12-month in subsections (c) and (f) to correct the grammar in these subsections; clarify in subsection (e)(1) that an individual who is on leave without pay for a full calendar month does not accrue lifetime service credit for the month; clarify the process for determining an employee's effective service date in subsection (e)(3) to make it easier to understand when it is applied to an employee who has been employed one or more times by the state; and change Parks and Wildlife Department to TPWD in subsection (g), Texas Department of Criminal Justice to TDCJ in subsections (a) and (g), and Texas Alcoholic Beverage Commission to TABC in subsection (g), to use the defined acronym for these agencies.

The amendments to §5.49 add definitions of hazardous duty position and lifetime service credit, and update citations, in subsection (a); clarify the process for determining a state employee's effective service date in subsection (d) to make it easier to understand when it is applied to an employee who has been employed one or more times by the state; update the citation in subsection (i); and clarify in subsection (l) that an individual who leaves a position that accrues lifetime service credit (or that would have accrued lifetime service credit had the longevity pay law been in effect when the individual left the position) to serve in the military and is reemployed with the state after completing that service in accordance with any applicable federal or state veterans' reemployment law accrued lifetime service credit during that service, even if the individual is on leave without pay during the individual's period of military service.

No comments were received regarding adoption of the amendments.

The amendments to §5.39 are adopted under Government Code, §659.308, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 659, Subchapter L, concerning hazardous duty pay. The amendments to §5.49 are adopted under Government Code, §659.047, which requires the comptroller to adopt rules to administer Government Code, Chapter 659, Subchapter D, concerning longevity pay.

The amendments to §5.39 implement Government Code, Chapter 659, Subchapter L, concerning hazardous duty pay. The amendments to §5.49 implement Government Code, Chapter 659, Subchapter D, concerning longevity pay.

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 13, 2021.

TRD-202101879

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: June 2, 2021

Proposal publication date: March 12, 2021

For further information, please call: (512) 475-0387



SUBCHAPTER O. UNIFORM STATEWIDE ACCOUNTING SYSTEM

34 TAC §5.200

The Comptroller of Public Accounts adopts the repeal of §5.200, concerning state property accounting system, without changes to the proposed text as published in the March 19, 2021, issue of the *Texas Register* (46 TexReg 1724). The repeal will not be republished.

New §5.200 and §5.205 will be adopted in a separate submission. New §5.200 reorganizes §5.200 to make it easier to understand; removes language that is already set forth in statute; and updates the language to better reflect current practices and procedures. New §5.205 updates the requirements for the disposal of certain computer equipment by a charitable organization, which are currently found in §5.200(r).

No comments were received regarding adoption of the repeal.

The repeal is adopted under Government Code, §403.271(b), which requires the comptroller to adopt necessary rules for the implementation of the state property accounting system; Government Code, §2101.035(a), which authorizes the comptroller to adopt rules for the effective operation of the uniform statewide accounting system of which the state property accounting system constitutes the fixed asset component as provided by Government Code, §403.271(c); and Government Code, §2175.907(f), which requires the comptroller to adopt rules to implement Government Code, §2175.907, concerning disposal of computer equipment by charitable organization.

The repeal implements Government Code, Chapter 403, Subchapter L, concerning property accounting; Government Code, Chapter 2101, concerning accounting procedures; and Government Code, §2175.907, concerning disposal of computer equipment by charitable organization.

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 13, 2021.

TRD-202101880

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: June 2, 2021

Proposal publication date: March 19, 2021

For further information, please call: (512) 475-0387



34 TAC §5.200, §5.205

The Comptroller of Public Accounts adopts new §5.200, concerning state property accounting system and new §5.205, concerning disposal of computer equipment by charitable organization, without changes to the proposed text as published in the March 19, 2021, issue of the *Texas Register* (46 TexReg 1725). The rules will not be republished.

New §5.200 reorganizes current §5.200, which is being repealed in a separate submission, to make it easier to understand; removes language that is already set forth in statute; and updates the language to better reflect current practices and procedures. This new section provides definitions in subsection (a); sets forth exemptions to this section in subsection (b); describes the general responsibilities of state agencies, agency heads, and property managers concerning state property in subsection (c); pro-

vides the requirements and process for the certification of internal and reporting state agencies in subsection (d); sets forth records and reporting requirements in subsection (e); describes the process of valuing state property in subsection (f); provides accounting practices in subsection (g); describes the requirements for inventory control in subsection (h); sets forth the requirements and processes for annual physical inventories in subsection (i); presents the requirements for entrusting personal property to other agency officials or employees in subsection (j); describes the requirements for loaning personal property to another state agency in subsection (k); sets forth the requirements for transferring state property in subsection (l); establishes the requirements for accounting for lost, destroyed, or damaged personal property in subsection (m); provides the requirements for accounting for stolen personal property in subsection (n); describes the requirements for accounting for surplus and salvage personal property in subsection (o); requires state agencies to submit information about real property to the General Land Office in subsection (p); sets forth the responsibilities of the head of an abolished state agency in subsection (q); and addresses conflict with federal laws or regulations in subsection (r).

New §5.205 updates the requirements for the disposal of certain computer equipment by a charitable organization, which are currently found in §5.200(r) and are repealed in a separate submission. This new section describes, in subsection (a), the types of computer equipment to which the new section applies; provides definitions in subsection (b); sets forth the requirements for the disposal or donation of certain computer equipment in subsection (c); and sets forth the retention period for records of the disposal or donation of computer equipment in subsection (d).

No comments were received regarding adoption of the new sections.

New §5.200 is adopted under Government Code, §403.271(b), which requires the comptroller to adopt necessary rules for the implementation of the state property accounting system, and Government Code, §2101.035(a), which authorizes the comptroller to adopt rules for the effective operation of the uniform statewide accounting system of which the state property accounting system constitutes the fixed asset component as provided by Government Code, §403.271(c).

New §5.205 is adopted under Government Code, §2175.907(f), which requires the comptroller to adopt rules to implement Government Code, §2175.907, concerning disposal of computer equipment by charitable organization.

New §5.200 implements Government Code, Chapter 403, Subchapter L, concerning property accounting, and Government Code, Chapter 2101, concerning accounting procedures.

New §5.205 implements Government Code, §2175.907.

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 13, 2021.

TRD-202101881

Victoria North

General Counsel for Fiscal Agency Affairs

Comptroller of Public Accounts

Effective date: June 2, 2021

Proposal publication date: March 19, 2021

For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.2

The Texas Veterans Commission (commission) adopts the amendment to §452.2 of Title 40, Part 15, Chapter 452 of the Texas Administrative Code concerning Advisory Committees, without changes to the proposed text as published in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1610). The rule will not be republished.

The amended rule is adopted to provide modified term limits for the committee chair and vice chair, establish certain duties of the vice chair, and provide modified term length parameters for all committee members.

No comments were received regarding the proposed rule amendment.

The amended rule is adopted under Texas Government Code §434.010, granting the commission the authority to establish rules, and Texas Government Code §434.0101, granting the commission the authority to establish rules governing the agency's advisory committees.

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 14, 2021.

TRD-202101941

Houston John Goodell

General Counsel

Texas Veterans Commission

Effective date: June 3, 2021

Proposal publication date: March 12, 2021

For further information, please call: (512) 463-3288

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CHAPTER 460. FUND FOR VETERANS' ASSISTANCE PROGRAM

The Texas Veterans Commission (commission) adopts the amendments to §460 of Title 40, Part 15, Subchapter A, concerning §460.3, Applicant Eligibility; §460.8, Grant Objectives; §460.10, Limitations of Grant Funds; and Subchapter B, concerning §460.23, Fiscal Monitoring, of the Texas Administrative Code, without changes to the proposed text as published in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1611). The rules will not be republished.

The amended rules are adopted to eliminate redundant language and modify the objectives of the Fund for Veterans' Assistance Grant Program. The proposed rule amendments update obsolete references to provide current citations to the Code of Federal Regulations, which provide a government-wide

framework for grants management. Previous federal regulations found in OMB Circulars are now superseded by recent modifications to the Uniform Grant Guidance in the Code of Federal Regulations.

No comments were received regarding the proposed rule amendments.

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE GRANT PROGRAM

40 TAC §§460.3, 460.8, 460.10

STATUTORY AUTHORITY

The amended rules are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §434.017, which authorizes the Commission to establish rules governing the award of grants by the Commission.

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 14, 2021.

TRD-202101942

Houston John Goodell

General Counsel

Texas Veterans Commission

Effective date: June 3, 2021

Proposal publication date: March 12, 2021

For further information, please call: (512) 463-3288

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SUBCHAPTER B. MONITORING ACTIVITIES

40 TAC §460.23

STATUTORY AUTHORITY

The amended rules are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §434.017, which authorizes the Commission to establish rules governing the award of grants by the Commission.

The amendments implement the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200.

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 14, 2021.

TRD-202101943

Houston John Goodell

General Counsel

Texas Veterans Commission

Effective date: June 3, 2021

Proposal publication date: March 12, 2021

For further information, please call: (512) 463-3288

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TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Department of Aging and Disability Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 81, Operation of the Area Agencies on Aging are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 213, Area Agencies on Aging, Subchapter A, Operation of the Area Agencies on Aging.

The rules will be transferred in the Texas Administrative Code effective June 15, 2021.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 81

TRD-202101932

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 81, Operation of the Area Agencies on Aging are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 213, Area Agencies on Aging, Subchapter A, Operation of the Area Agencies on Aging.

The rules will be transferred in the Texas Administrative Code effective June 15, 2021.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 81

Figure: 40 TAC Chapter 81

Current Rules Title 40. Social Services and Assistance Part 1. Department of Aging and Disability Services Chapter 81. Operation of the Area Agencies on Aging	Move to Title 26. Health and Human Services Part 1. Health and Human Services Commission Chapter 213. Area Agencies on Aging Subchapter A. Operation of the Area Agencies on Aging
§81.9. Designation of Planning and Service Areas.	§213.1. Designation of Planning and Service Areas.
§81.11. Designation of Area Agencies on Aging.	§213.3. Designation of Area Agencies on Aging.
§81.13. Compliance with Contractor Responsibilities, Rewards and Sanctions.	§213.5. Compliance with Contractor Responsibilities, Rewards and Sanctions.
§81.15. Appeal Procedures for Area Agency on Aging Contractors.	§213.7. Appeal Procedures for Area Agency on Aging Contractors.
§81.19. Grievance Procedures for Participants in Older Americans Act Programs.	§213.9. Grievance Procedures for Participants in Older Americans Act Programs.
§81.23. Emergency Management Responsibilities of the Texas Department on Aging.	§213.11. Emergency Management Responsibilities of the Texas Department on Aging.

TRD-202101935

TRD-202101933

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Department of Aging and Disability Services

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Health and Human Services Commission

Rule Transfer

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 83, Area Agency on Aging Administrative Requirements are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 213, Area Agencies on Aging, Subchapter B, Area Agency on Aging Administration.

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 83, Area Agency on Aging Administrative Requirements are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 213, Area Agencies on Aging, Subchapter B, Area Agency on Aging Administration.

The rules will be transferred in the Texas Administrative Code effective June 15, 2021.

The rules will be transferred in the Texas Administrative Code effective June 15, 2021.

The following table outlines the rule transfer:

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 83

Figure: 40 TAC Chapter 83

Figure: 40 TAC Chapter 83

<p>Current Rules Title 40. Social Services and Assistance Part 1. Department of Aging and Disability Services Chapter 83. Area Agency on Aging Administrative Requirements</p>	<p>Move to Title 26. Health and Human Services Part 1. Health and Human Services Commission Chapter 213. Area Agencies on Aging Subchapter B. Area Agency on Aging Administration</p>
§83.3. System of Access and Assistance.	§213.51. System of Access and Assistance.
§83.4. Certification of Benefits Counselors Regarding the Preparation of Advanced Directives.	§213.53. Certification of Benefits Counselors Regarding the Preparation of Advanced Directives.
§83.19. Direct Purchase of Service (DPS).	§213.55. Direct Purchase of Service (DPS).

TRD-202101936



Department of Assistive and Rehabilitative Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(a), specified the Department of Assistive and Rehabilitative Services (DARS) be abolished September 1, 2017, after all its functions were transferred to HHSC or the Department of Family and Protective Services in accordance with Texas Government Code, §531.0201. The former DARS rules in Texas Administrative Code (TAC), Title 40, Part 2, Chapter 102, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services are being transferred to 26 TAC Part 1, Chapter 349, Purchase of Goods and Services for Rehabilitation, Independence, and Early Childhood Intervention.

The rules will be transferred in the Texas Administrative Code effective June 15, 2021.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 102

TRD-202101934



Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(a), specified the Department of Assistive and Rehabilitative Services (DARS) be abolished September 1, 2017, after all its functions were transferred to HHSC or the Department of Family and Protective Services in accordance with Texas Government Code, §531.0201. The former DARS rules in Texas Administrative Code (TAC), Title 40, Part 2, Chapter 102, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services are being transferred to 26 TAC Part 1, Chapter 349, Purchase of Goods and Services for Rehabilitation, Independence, and Early Childhood Intervention.

The rules will be transferred in the Texas Administrative Code effective June 15, 2021.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 102

Figure: 40 TAC Chapter 102

<p>Current Rules Title 40. Social Services and Assistance Part 2. Department of Assistive and Rehabilitative Services Chapter 102. Purchase of Goods and Services by the Department of Assistive and Rehabilitative</p>	<p>Move to Title 26. Health and Human Services Part 1. Health and Human Services Commission Chapter 349. Purchase of Goods and Services for Rehabilitation, Independence, and Early Childhood Intervention</p>
<p>Subchapter A. Purchase of Goods and Services</p>	<p>Subchapter A. Rate Determination for Purchase of Rehabilitation, Independence, and Early Childhood Intervention Medical Services</p>
<p>§102.213. Alternative Purchasing Methods - Rates for Medical Services.</p>	<p>§349.1. Alternative Purchasing Methods - Rates for Medical Services.</p>

TRD-202101937



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

Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, Texas Administrative Code, Title 7, Part 1, Chapter 7, concerning Texas Financial Education Endowment Fund.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705, or by email to rule.comments@occc.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional public comment period prior to final adoption or repeal by the commission.

TRD-202101995

Matthew Nance

Deputy General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas

Filed: May 18, 2021



Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 89, concerning Property Tax Lenders.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this

chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705, or by email to rule.comments@occc.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional public comment period prior to final adoption or repeal by the commission.

TRD-202101994

Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

Filed: May 18, 2021



State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 227, Provisions for Educator Preparation Candidates, pursuant to the Texas Government Code (TGC), §2001.039.

As required by the TGC, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 227 continue to exist.

The comment period on the review of 19 TAC Chapter 227 begins May 28, 2021, and ends June 28, 2021. A form for submitting public comments on the proposed rule review is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/State_Board_for_Educator_Certification_Rule_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/State_Board_for_Educator_Certification_Rule_Review/). The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 227 at the July 23, 2021 meeting in accordance with the SBEC board operating policies and procedures.

TRD-202102002

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Filed: May 19, 2021



The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 228, Requirements for Educator Preparation Programs, pursuant to the Texas Government Code (TGC), §2001.039.

As required by the TGC, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 228 continue to exist.

The comment period on the review of 19 TAC Chapter 228 begins May 28, 2021, and ends June 28, 2021. A form for submitting public comments on the proposed rule review is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/State_Board_for_Educator_Certification_Rule_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/State_Board_for_Educator_Certification_Rule_Review/). The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 228 at the July 23, 2021 meeting in accordance with the SBEC board operating policies and procedures.

TRD-202102004

Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: May 19, 2021

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Adopted Rule Reviews

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 231, Requirements for Public School Personnel Assignments, pursuant to the Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 231 in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1663).

Relating to the review of 19 TAC Chapter 231, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The following is a summary of the public comments received on the proposal and the responses.

Comment: A total of 23 commenters suggested amendments to broaden the list of certificates appropriate for placement into the various assignments. Eighteen comments were specific to Information Technology, Computer Maintenance and Networking courses; three comments were specific to Principles of Construction, Technology Applications for Independent Study, and Principles of Bioscience courses; and two comments were specific to Advanced Placement and Elective courses.

Response: Texas Education Agency (TEA) staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC because any amendments must be made using the standard rulemaking process.

Comment: A total of nine commenters requested amendments to broaden the list of certificates appropriate to teach Computer Science to include individuals certified to teach Technology Applications, Trade and Industrial Education, Business, or Marketing.

Response: TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC because any amendments must be made using the standard rulemaking process. However, the SBEC dis-

agreed with these recommended changes and rejected them when they were considered as part of proposed rulemaking at the October 2020 Board meeting.

Comment: One commenter recommended the SBEC consider adjusting certification requirements to allow people with an associate degree and five years of working experience as an entrepreneur or in management with appropriate licensure to teach business courses.

Response: TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC because any amendments must be made using the standard rulemaking process. In lieu of further rulemaking, school districts currently have options, such as school district teaching permits, teacher certification waivers, and districts of innovation with designated exemptions from certification requirements, that they can utilize to employ uncertified individuals who have the credentials highlighted by the commenter in teaching assignments.

This concludes the review of 19 TAC Chapter 231.

TRD-202102005

Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: May 19, 2021

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The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 245, Certification of Educators from Other Countries, pursuant to the Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 245 in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1663).

Relating to the review of 19 TAC Chapter 245, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The following is a summary of the public comments received on the proposal and the responses.

Comment: One commenter recommended two amendments to SBEC rules to eliminate the required documentation of licensure status in other countries and to consider an adjustment to the required performance on the Test of English as a Foreign Language-Internet Based Test (TOEFL-iBT) to more closely align with university admission requirements.

Response: Texas Education Agency staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC because any amendments must be made using the standard rulemaking process.

This concludes the review of 19 TAC Chapter 245.

TRD-202102006

Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: May 19, 2021

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Request for Applications (RFA) for the Choose Life Grant Program

The Office of the Attorney General (OAG) is soliciting applications for projects that support the Choose Life Grant Program. The purpose of the OAG Choose Life Grant Program is to provide funds, using a competitive allocation method, as described in Chapter 402 of the Government Code.

Applicable Funding Source for Choose Life Grant Program:

The Choose Life Grant Program receives funding from a separate trust fund established by the Comptroller of Public Accounts outside the general revenue fund that the OAG is authorized to administer to make grants to an eligible organization. The Choose Life account is authorized by Chapter 504.662 of the Transportation Code, and Chapter 402.036 of the Government Code, and is funded by fees collected for the purchase of a Choose Life License Plate, as well as gifts, grants, donations and legislative appropriations. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: An Applicant Organization must be an eligible organization in this state to apply for the Choose Life Grant Program, meaning it must meet all of the following criteria:

- An organization that provides services in this state and is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt charitable organization under Section 501(c)(3) of that code;
- Provides counseling and material assistance to pregnant women who are considering placing their children for adoption;
- Does not charge for services provided;
- Does not provide abortions or abortion-related services or make referrals to abortion providers;
- Is not affiliated with an organization that provides abortions or abortion-related services or makes referrals to abortion providers; and
- Does not contract with an organization that provides abortions or abortion-related services or makes referrals to abortion providers.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the applica-

tion process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. If an on-line account is not created, the Applicant will be unable to apply for funding. To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

- First Name
- Last Name
- Email Address (*It is highly recommended to use a generic organization email address if available*)
- Organization Legal Name

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum grant request the OAG will consider is \$1,000. As of the date this Application Kit is published, the amount available in the Choose Life account to award is approximately \$23,000. Applications requesting an amount below the minimum will not be considered.

Start Date and Length of Grant Contract Period: The term of this grant contract is one year from September 1, 2021, through August 31, 2022, with the ability for an extension of time, subject to and contingent on funding and approval by the OAG.

No Match or Volunteer Requirements: There are no match or volunteer requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring and review components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions will use a competitive allocation method. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the OAG. The decisions made by the OAG are final and are not subject to appeal.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Funding for Applications may be prioritized for pre-adoption counseling, post-adoption counseling and advertising relating to adoption. Ap-

licants are encouraged to prioritize their needs and explain the reason for their funding request.

Prohibitions on Use of Choose Life Grant Program Funds: OAG grant funds may not be used to support activities related to providing abortions or abortion-related services, or making referrals to abortion providers. OAG grant funds may not be used to support or pay the costs of equipment, overtime, out-of-state travel, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact the Grants Administration Division at Grants@oag.texas.gov or (512) 936-0792.

TRD-202101956
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 17, 2021

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Texas Water Code and Texas Health and Safety Code
Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *Harris County, Texas and the State of Texas, acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. DL Glover, Inc.*, Cause No. 2019-83967, in the 133rd Judicial District, Harris County, Texas.

Nature of the Suit: DL Glover, Inc. ("Defendant") owns and operates air curtain incinerators ("ACIs") as part of its land clearing operations at multiple locations in Harris County, Texas. Between 2015 and 2017, the Harris County Pollution Control Services Department ("HCPCSD") documented several incidences of improper or illegal use of ACIs at Defendant's work sites that led to events such as the excessive emission of airborne debris, smoke, and ash; accidental grass fire near a residential neighborhood; and ash falling into a resident's pool, in violation of the Texas Clean Air Act and rules promulgated thereunder by the Texas Commission on Environmental Quality ("TCEQ"). The State of Texas, on behalf of the TCEQ, joined the suit as a necessary and indispensable party.

Proposed Agreed Judgment: The proposed Agreed Final Judgment and Permanent Injunction orders Defendant to regularly train new and current employees on the legal requirements of operating ACIs; perform daily verification that no burning material remains on site; keep a daily log of such verification; and report to the HCPCSD every three months.

The Agreed Judgment also assesses against Defendant a civil penalty of \$20,000, to be equally divided between the State and Harris County; attorney's fees to the State in the amount of \$5,000; attorney's fees to Harris County in the amount of \$5,000, and court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Shea Pearson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911, or email: Shea.Pearson@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202101945
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 14, 2021

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Texas Water Code and Texas Health and Safety Code
Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *Ector County, Texas and the State of Texas, acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. Plant Maintenance Services, LLC*, Cause No. D-1-GN-15-000139, in the 98th Judicial District, Travis County, Texas.

Nature of the Suit: Defendant Plant Maintenance Services, LLC ("Defendant") is the former owner of an industrial maintenance and cleaning facility located at 2606 Pearl Street, near Odessa, Ector County, Texas. Ector County initiated suit on January 12, 2015 alleging that in 2004, Defendant began storing barrels of oil and hazardous waste on the property, in violation of the Texas Clean Air Act and the Texas Solid Waste Disposal Act. Specifically, refuse chemicals from chemical cleanings and acid washes from boiler cleanings were discharging onto the ground. This is in violation of rules promulgated by the Texas Commission on Environmental Quality ("TCEQ"). The State of Texas, on behalf of the TCEQ, joined the suit as a necessary and indispensable party. Since the suit was filed, Defendant has removed all the contamination and the property has been sold.

Proposed Agreed Judgment: The proposed Agreed Final Judgment assesses against Defendant civil penalties in the amount of \$60,000.00 to be equally divided between Ector County and the State; and attorney's fees and costs in the amount of \$7,500.00 to Ector County and \$7,500.00 to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Jake K. Brown, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin,

Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911, or email: jake.brown@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

Entered this 18th day of May, 2021.

TRD-202101967
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 18, 2021

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/24/21 - 05/30/21 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 05/24/21 - 05/30/21 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/21 - 06/30/21 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/21 - 06/30/21 is 5.00% for commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202101984
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 18, 2021

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Credit Union Department

Application to Expand Field of Membership

Notice is given that the following applications has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from MemberSource Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in and businesses located in Harris County, Texas, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in and businesses located in Montgomery County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-char>

ter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202102000
John J. Kolhoff
Commissioner
Credit Union Department
Filed: May 19, 2021

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Notice of Final Action

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application:

Articles of Incorporation Change - Approved

Cabot & NOI Employees Credit Union (Pampa) - See *Texas Register* issue dated March 26, 2021.

TRD-202101999
John J. Kolhoff
Commissioner
Credit Union Department
Filed: May 19, 2021

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Texas Education Agency

Request for Applications Concerning the 2021-2022 Texas Reading Initiative - Literacy Coaching and Professional Development Grades 6-12 Grant Program

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-21-124 is authorized by United States Code, Title 20, Chapter 70, Subchapter II, Part B, Subpart 2, §6642.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-21-124 from eligible applicants, which include local educational agencies, including independent school districts, open-enrollment charter schools, and regional education service centers (ESCs). TEA aims to fund approximately 10 literacy coaches over the course of three years. Additionally, TEA seeks to support four regional literacy conferences focused on using high-quality instructional materials (HQIM) to support a knowledge-building approach to learning. Grant funds are to be used to support activities that will directly impact learning in Grades 6-12. Applicants must score a minimum of 75% of the total points on the application to be considered for award.

Description. TEA seeks to provide grants for developing a pipeline of literacy coaches and supporting regional literacy conferences focused on using HQIM to support a knowledge-building approach to learning. School districts, open-enrollment charter schools, and ESCs may apply for this grant individually or as a consortium to serve the unique and diverse needs of their communities. This grant serves eligible entities from Grades 6-12. Literacy Coaches Grantees may use funds from the subgrant to compensate literacy coaches and are encouraged to use strategic compensation models that enhance recruitment and retention of literacy coaches in traditionally hard-to-staff locations. Successful grantees will identify placement of literacy coaches based on school or district needs that may include economically disadvantaged, students with disabilities, English learners, and highly mobile/at-risk

students. Competitive preference will also include applications that seek to serve rural communities and districts in Qualified Opportunity Zones (QOZs). Literacy coaches may serve as reading academy (RA) cohort leaders, RA coach leaders supporting QOZs, coaches for comprehensive HQIM Product Academies, and continued teacher implementation support. Regional Literacy Conferences Grantees may use funds from the subgrant to support the planning and execution of regional literacy conferences. Successful grantees will recruit educators who teach economically disadvantaged students, students with disabilities, English learners, and highly mobile/at-risk students to attend the conference. Competitive preference will also include applications that seek to serve rural communities and districts in QOZs.

Dates of Project. The 2021-2022 Texas Reading Initiative - Literacy Coaching and Professional Development Grades 6-12 grant program will be implemented during the 2021-2022 school year. Applicants should plan for a starting date of no earlier than September 24, 2021, and an ending date of no later than September 30, 2022.

Project Amount. Approximately \$1.44 million is available for funding the 2021-2022 Texas Reading Initiative - Literacy Coaching and Professional Development Grades 6-12 grant program. It is anticipated that awards will be made approximately as follows: Level 1 Coaching (1:60 Ratio): 5 awards - \$104,000 per year for three years; Level 1 Coaching (1:30 Ratio): 5 awards - \$104,000 per year for three years; and Regional Literacy Conferences: 4 awards - \$100,000 per year for three years. Annually, funding after Year 1 ("continuation funding") is contingent on satisfactory progress of prior year compliance with requirements, achievement of stated service and performance targets, general budget approval by the commissioner of education, and appropriations by the United States Congress. Continuation funding may require grantees to submit a noncompetitive or competitive continuation grant application each year of the total subgrant period. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Peer reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at <https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx> for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted via a survey, which can be found at the link identified in the Program Guidelines of the RFA, no later than Monday, June 14, 2021. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Monday, June 21, 2021. In the "Search

Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 11:59 p.m. (Central Time), Monday, June 28, 2021, to be eligible to be considered for funding. TEA will only accept applications by email to competitive-grants@tea.texas.gov.

Issued in Austin, Texas, on May 19, 2021.

TRD-202102003

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: May 19, 2021



Request for Applications Concerning the 2021-2022 Texas Reading Initiative - Literacy Coaching and Professional Development Grades K-5 Grant Program

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-21-123 is authorized by United States Code, Title 20, Chapter 70, Subchapter II, Part B, Subpart 2, §6642.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-21-123 from eligible applicants, which include local educational agencies, including independent school districts, open-enrollment charter schools, and regional education service centers (ESCs). TEA aims to fund approximately 10 literacy coaches over the course of three years. Additionally, TEA seeks to support four regional literacy conferences focused on using high-quality instructional materials (HQIM) to support a knowledge-building approach to learning. Grant funds are to be used to support activities that will directly impact learning in Kindergarten-Grade 5. Applicants must score a minimum of 75% of the total points on the application to be considered for award.

Description. TEA seeks to provide grants for developing a pipeline of literacy coaches and supporting regional literacy conferences focused on using HQIM to support a knowledge-building approach to learning. School districts, open-enrollment charter schools, and ESCs may apply for this grant individually or as a consortium to serve the unique and diverse needs of their communities. This grant serves eligible entities from Kindergarten-Grade 5. Literacy Coaches Grantees may use funds from the subgrant to compensate literacy coaches and are encouraged to use strategic compensation models that enhance recruitment and retention of literacy coaches in traditionally hard-to-staff locations. Successful grantees will identify placement of literacy coaches based on school or district needs that may include economically disadvantaged, students with disabilities, English learners, and highly mobile/at-risk students. Competitive preference will also include applications that seek to serve rural communities and districts in Qualified Opportunity Zones (QOZs). Literacy coaches may serve as reading academy (RA) cohort leaders, RA coach leaders supporting QOZs, coaches for comprehensive HQIM Product Academies, and continued teacher implementation support. Regional Literacy Conferences Grantees may use funds from the subgrant to support the planning and execution of regional literacy conferences. Successful grantees will recruit educators who teach economically disadvantaged students, students with disabilities, English learners, and highly mobile/at-risk students to attend the conference. Competitive preference will also include applications that seek to serve rural communities and districts in QOZs.

Dates of Project. The 2021-2022 Texas Reading Initiative - Literacy Coaching and Professional Development Grades K-5 grant program will be implemented during the 2021-2022 school year. Applicants should plan for a starting date of no earlier than September 24, 2021, and an ending date of no later than September 30, 2022.

Project Amount. Approximately \$1.24 million is available for funding the 2021-2022 Texas Reading Initiative - Literacy Coaching and Professional Development Grades K-5 grant program. It is anticipated that awards will be made approximately as follows: Level 1 Coaching (1:60 Ratio): 5 awards - \$104,000 per year for three years; Level 1 Coaching (1:30 Ratio): 5 awards - \$104,000 per year for three years; and Regional Literacy Conferences: 4 awards - \$50,000 per year for three years. Annually, funding after Year 1 ("continuation funding") is contingent on satisfactory progress of prior year compliance with requirements, achievement of stated service and performance targets, general budget approval by the commissioner of education, and appropriations by the United States Congress. Continuation funding may require grantees to submit a noncompetitive or competitive continuation grant application each year of the total subgrant period. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Peer reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at <https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx> for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted via a survey, which can be found at the link identified in the Program Guidelines of the RFA, no later than Monday, June 14, 2021. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Monday, June 21, 2021. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 11:59 p.m. (Central Time), Monday, June 28, 2021, to be eligible to be considered for funding. TEA will only accept applications by email to competitive-grants@tea.texas.gov.

Issued in Austin, Texas, on May 19, 2021.

TRD-202102001

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: May 19, 2021

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 29, 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 29, 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: Chris Hoedebeck; DOCKET NUMBER: 2021-0022-WR-E; IDENTIFIER: RN111115663; LOCATION: Princeton, Collin County; TYPE OF FACILITY: residential construction site; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Bridgeport; DOCKET NUMBER: 2020-1588-MLM-E; IDENTIFIER: RN101404846; LOCATION: Bridgeport, Wise County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.42(j), by failing to use an approved chemical or media for the treatment of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 61 for Drinking Water System Components; 30 TAC §290.46(e) and THSC, §341.033(a), by failing to ensure that the production, treatment, and distribution facilities at the public water

system are operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the ED; and TWC, §26.121(a), by failing to obtain authorization to discharge municipal waste into or adjacent to any water in the state; PENALTY: \$14,640; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Grapevine; DOCKET NUMBER: 2020-1584-MWD-E; IDENTIFIER: RN101614352; LOCATION: Grapevine, Tarrant County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010486002, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of untreated wastewater into or adjacent to any water in the state; PENALTY: \$8,025; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Cook's Garage, LLC; DOCKET NUMBER: 2020-1131-PWS-E; IDENTIFIER: RN110603537; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water supply; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(d)(2), by failing to provide the facility's two pressure tanks with a pressure release device and an easily readable pressure gauge; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certify that they are operating within specifications; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's two pressure tanks annually; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: \$4,270; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(5) COMPANY: D.R. Horton - Texas, Ltd.; DOCKET NUMBER: 2020-1342-WQ-E; IDENTIFIER: RN110726650; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: residential development; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System General Permit Number TXR15934V, Part III, Section F(6)(a), by failing to install and maintain best management practices at the site which resulted in an unauthorized discharge of pollutants; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Haldor Topsoe, Incorporated; DOCKET NUMBER: 2020-1581-AIR-E; IDENTIFIER: RN101211498; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 9203, Special Conditions Number 1, Federal Operating Permit Number O1217, General Terms and Conditions and Special Terms and Conditions Number 14,

and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$5,588; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: HEIMCO, INCORPORATED dba Fisherman's One Stop; DOCKET NUMBER: 2020-1590-PST-E; IDENTIFIER: RN101722197; LOCATION: Yantis, Wood 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 test the cathodic protection system for operability and adequacy 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: \$4,876; ENFORCEMENT COORDINATOR: Courtney Atkins, (512) 534-6862; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: High Garden Enterprises, LLC dba Marshall Mart; DOCKET NUMBER: 2020-1606-PST-E; IDENTIFIER: RN101818235; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: temporarily out-of-service; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and §334.54(b)(2) and (c)(1) and TWC, §26.3475(c)(1), by failing to maintain all tank access points in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, and failing to monitor a temporarily out-of-service underground storage tank system in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Courtney Atkins, (512) 239-1118; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: INEOS Styrolution America LLC; DOCKET NUMBER: 2020-1475-AIR-E; IDENTIFIER: RN100542224; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review (NSR) Permit Number 5252, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1625, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 14, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rates; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 5252, SC Number 1, FOP Number O1625, and GTC and STC Number 14, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$84,375; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Kiolbassa Provision Company; DOCKET NUMBER: 2020-1566-AIR-E; IDENTIFIER: RN102315207; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: meat processing plant; RULES VIOLATED: 30 TAC §106.6(b), Permit by Rule Registration Number 75973, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,500; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: KTM Nepal LLC dba The Lively Grocery; DOCKET NUMBER: 2020-1589-PST-E; IDENTIFIER: RN101443133; LOCATION: Kemp, Kaufman County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.42(a), by failing to design, install, and operate all components

of an underground storage tank (UST) system in a manner that will prevent releases of regulated substances due to structural failure or corrosion; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Luna Road Recyclers, LLC; DOCKET NUMBER: 2020-1570-AIR-E; IDENTIFIER: RN108296567; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: permanent rock crusher; RULES VIOLATED: 30 TAC §116.115(b)(2)(E)(i) and §116.615(8), Standard Permit Registration Number 146849, Air Quality Standard Permit for Permanent Rock and Concrete Crushers, General Conditions Number 8 and Special Conditions (SC) Number (1)(M), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records containing the information and data sufficient to demonstrate compliance with the standard permit; 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 146849, Air Quality Standard Permit for Permanent Rock and Concrete Crushers, SC Number (3)(J), and THSC, §382.085(b), by failing to install permanently mounted spray bars at the inlet and outlet of all crushers, at all shaker screens, and at all material transfer points; 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 146849, Air Quality Standard Permit for Permanent Rock and Concrete Crushers, SC Number (3)(L), and THSC, §382.085(b), by failing to prevent visible emissions from the crusher, associated facilities, associated sources, and in-plant roads associated with the plant from leaving the property for a period exceeding 30 seconds in duration in any six-minute period; and 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 146849, Air Quality Standard Permit for Permanent Rock and Concrete Crushers, SC Number (3)(M), and THSC, §382.085(b), by failing to minimize dust emissions from all in-plant roads and active work areas that are associated with the operation of the crusher, associated facilities, and associated sources; PENALTY: \$13,125; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Manakamana Properties, Incorporated dba Proctor Grocery; DOCKET NUMBER: 2021-0016-PST-E; IDENTIFIER: RN101431757; LOCATION: Proctor, Comanche 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 manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Courtney Atkins, (512) 239-1118; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(14) COMPANY: MarkWest Energy East Texas Gas Company, L.L.C.; DOCKET NUMBER: 2020-1306-AIR-E; IDENTIFIER: RN106407299; LOCATION: Antioch, Panola County; TYPE OF FACILITY: gas compressor station; 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: \$17,100; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3424; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: Martin Marietta Materials Southwest, LLC; DOCKET NUMBER: 2020-1571-EAQ-E; IDENTIFIER: RN102769940; LOCATION: San Antonio, Medina County; TYPE OF FACILITY: commercial quarry; RULES VIOLATED: 30 TAC §213.4(a)(1) and (h)(3), Water Pollution Abatement Plan Number

13-00040502A, Standard Condition Number 21, by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: NAEEM GROUP ENTERPRISES INC dba Shop N Go 2; DOCKET NUMBER: 2020-1608-PST-E; IDENTIFIER: RN102804333; LOCATION: Beaumont, Jefferson 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 that 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: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: OQ Chemicals Corporation; DOCKET NUMBER: 2020-1582-AIR-E; IDENTIFIER: RN105195655; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 2175, Special Conditions Number 3, Federal Operating Permit Number O2943, General Terms and Conditions and Special Terms and Conditions Number 25, and Texas Health and Safety Code, §382.085(b), by failing to comply with the concentration limits in the flue gas from the boilers; PENALTY: \$19,350; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$9,675; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: PCI Nitrogen, LLC; DOCKET NUMBER: 2021-0010-AIR-E; IDENTIFIER: RN101621944; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(c) and §122.143(4), Federal Operating Permit (FOP) Number O1252, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of an emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 56361, Special Conditions Number 1, FOP Number O1252, GTC and STC Number 12, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$15,438; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Sekisui Specialty Chemicals America, LLC; DOCKET NUMBER: 2020-1580-AIR-E; IDENTIFIER: RN103012183; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(b)(1)(H) and §122.143(4), Federal Operating Permit (FOP) Number O2308, 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 19618, Special Conditions Number 1, FOP Number O2308, GTC and STC Number 17, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$7,580; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,032; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Town of Lakewood Village; DOCKET NUMBER: 2020-1554-MWD-E; IDENTIFIER: RN101917706; LOCATION: Lakewood Village, Denton County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010903001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$4,387; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2021-0007-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refining plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 39142 and PSDTX822M2, Special Conditions Number 1, Federal Operating Permit Number O1253, General Terms and Conditions and Special Terms and Conditions Number 23, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Westlake Longview Corporation; DOCKET NUMBER: 2020-1315-AIR-E; IDENTIFIER: RN105138721; LOCATION: Longview, Harrison County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Numbers 19959 and 47007, Special Conditions Number 1, Federal Operating Permit Numbers O1967 and O1983, General Terms and Conditions and Special Terms and Conditions Numbers 11 and 12, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$16,500; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: Westpark Properties, LLC; DOCKET NUMBER: 2020-1563-PWS-E; IDENTIFIER: RN110518289; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(J), by failing to provide the facility's six wells with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away from the six wellheads at not less than 0.25 inches per foot; 30 TAC §290.41(c)(3)(K), by failing to ensure that the facility's six wellheads and pump bases are sealed by a gasket or sealing compound and properly vented with a well casing vent that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated, and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the facility's six well pumps prior to any treatment; 30 TAC §290.41(c)(3)(O), by failing to protect all well units with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house to exclude possible contamination or damage to the facilities by trespassers; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(c), by failing to ensure that all potable water storage shall be covered and designed, fabricated, erected, tested, and disinfected in strict accordance with current American Water Works Association standards; 30 TAC §290.45(b)(1)(B)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(B)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; 30

TAC §290.45(b)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exist, or after any material improvements, corrections, or additions to the private water distribution facilities; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's six ground storage tanks annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's six pressure tanks annually; 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; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$51,736; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: WM. G. JOHNSON OIL CO. dba Tiger Tote 104; DOCKET NUMBER: 2020-1592-PST-E; IDENTIFIER: RN106608821; LOCATION: Corsicana, Navarro County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.225 and Texas Health and Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.45(d)(1)(E)(vi), by failing to equip sumps or manways which are used for interstitial monitoring of piping with liquid sensing probes which will alert the UST system owner or operator if more than two inches of liquid collects in any sump or manway; 30 TAC §334.72, by failing to report suspected releases to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: \$35,140; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: XTO Energy Incorporated; DOCKET NUMBER: 2021-0006-AIR-E; IDENTIFIER: RN100210434; LOCATION: Hawkins, Wood County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §116.110(a) and §116.315(a) and Texas Health and Safety Code (THSC), §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; and 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit Number O2815, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$52,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$20,950; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202101963
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 18, 2021

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Enforcement Orders

An agreed order was adopted regarding City of Matador, Docket No. 2019-0909-PWS-E on May 18, 2021, assessing \$1,595 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NORTEX CAPITAL INC dba Xpresway, Docket No. 2020-0678-PST-E on May 18, 2021 assessing \$3,635 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Roslyn Dubberstein, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202102008

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 19, 2021



Enforcement Orders

A default order was adopted regarding SYED R ENTERPRISES INC dba King Mart 1 and King Mart 2, Docket No. 2018-0602-PST-E on May 19, 2021, assessing \$9,900 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EMROOZ, Inc dba Snappy Foods 8, Docket No. 2018-1240-PST-E on May 19, 2021, assessing \$20,250 in administrative penalties with \$4,050 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 Ector County, Docket No. 2018-1329-WQ-E on May 19, 2021, assessing \$21,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Driscoll, Docket No. 2018-1440-MWD-E on May 19, 2021, assessing \$20,412 in administrative penalties with \$4,082 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NAAZ 24 BIZ INC dba Foodies 2, Docket No. 2019-0179-PST-E on May 19, 2021, assessing \$13,525 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding SKYTOP HOP INC dba Skytop Food Mart, Docket No. 2019-0254-PST-E on May 19, 2021, assessing \$22,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of La Marque, Docket No. 2019-0549-MWD-E on May 19, 2021, assessing \$11,438 in administrative penalties with \$2,287 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Rickey Evans, Docket No. 2019-0848-WQ-E on May 19, 2021, assessing \$18,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ARC DGLBKT004, LLC dba Dollar General Store 14227, Docket No. 2019-1011-PWS-E on May 19, 2021, assessing \$17,644 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Galena Park, Docket No. 2019-1034-MWD-E on May 19, 2021, assessing \$43,500 in administrative penalties with \$8,700 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Juan Garcia dba Regio Tires 2, Docket No. 2019-1086-MSW-E on May 19, 2021, assessing \$7,875 in administrative penalties with \$1,575 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 the City of Mercedes, Docket No. 2019-1101-MWD-E on May 19, 2021, assessing \$18,750 in administrative penalties with \$3,750 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Sherry Moore-Chapman a.k.a. Sherry Sue Workman, Docket No. 2019-1168-MLM-E on May 19, 2021, assessing \$8,039 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JOSEPH ADAM CORPORATION, Docket No. 2019-1210-PST-E on May 19, 2021, assessing \$9,403 in administrative penalties with \$1,880 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 Black Market Investments, LLC, Docket No. 2019-1357-EAQ-E on May 19, 2021, assessing \$33,225 in administrative penalties with \$6,645 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rock Dicke Incorporated dba RDI Fabricators, Docket No. 2019-1402-IHW-E on May 19, 2021, assessing \$37,332 in administrative penalties with \$7,466 deferred. In-

formation concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding T & S Quality Services, LLC, Docket No. 2019-1433-AIR-E on May 19, 2021, assessing \$28,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christopher Mullins, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TXBR Ramblewood MHP, LLC, Docket No. 2019-1759-PWS-E on May 19, 2021, assessing \$3,782 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Cary M. Cantu dba MC Sprinkler Repair, Docket No. 2019-1793-LII-E on May 19, 2021, assessing \$1,191 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas MEX Limited Company, LLC dba Tejano Mart 4, Docket No. 2020-0360-PST-E on May 19, 2021, assessing \$7,970 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Weiss Sand and Clay, LP, Docket No. 2020-0410-WQ-E on May 19, 2021, assessing \$7,275 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAAHEL, INC. dba Snappy Foods 20 and dba Snappy Foods 22, Docket No. 2020-0427-PST-E on May 19, 2021, assessing \$36,505 in administrative penalties with \$7,301 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HARVEY'S LP GAS COMPANY, Docket No. 2020-0535-PST-E on May 19, 2021, assessing \$10,426 in administrative penalties with \$2,085 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PRIME TIME GROCERY, LLC dba E Z Buy, Docket No. 2020-0627-PST-E on May 19, 2021, assessing \$9,843 in administrative penalties with \$1,968 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 JEANNIE MART INVESTMENT INC dba J Mart, Docket No. 2020-0735-PST-E on May 19, 2021, assessing \$8,297 in administrative penalties with \$1,659 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Atkins, Enforcement Coordinator at

(512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shell Oil Company, Docket No. 2020-0906-AIR-E on May 19, 2021, assessing \$183,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202102020

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 19, 2021



Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Proposed Permit No. 40319

Application. Oncore Healthcare Solutions, LLC, 2613 Skyway Drive, Grand Prairie, Texas 75052 has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40319, to construct and operate a Type V municipal solid waste medical waste processing facility. The proposed facility, OHS Telephone Rd., will be located approximately 5 miles southeast of downtown Houston. The facility is located approximately 1.1 miles due northwest of the intersection of I-610 and I-45 (Gulf Freeway) and approximately 0.7 miles north along Telephone Road from the intersection of I-610 (South Loop E Freeway) and Telephone Road (Exit 33) Zip Code 75052, in Harris County. The Applicant is requesting authorization to process, transfer, and store municipal solid waste that includes medical waste as defined in §326.3(23), trace chemotherapeutic waste, non-hazardous pharmaceutical waste, and other healthcare-related items that have come into contact with medical waste. The registration application is available for viewing and copying at the Flores Neighborhood Library, 110 North Milby Street, Houston, Texas 77003 and may be viewed online at <https://www.gdsassociates.com/txprojects/>. 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/11amD50>. For exact location, refer to application.

The TCEQ executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall

be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address, will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, www.tceq.texas.gov/goto/pep. General information regarding the TCEQ can be found on our website at www.tceq.texas.gov/. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Oncore Healthcare Solutions, LLC at the address stated above or by calling Mason Bryant at (972) 786-7060, email at mason@oncoreus.com.

TRD-202101950
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 17, 2021



Notice of Correction to Agreed Order Number 5

In the July 10, 2020, issue of the *Texas Register* (45 TexReg 4822), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 5, for BMC West, LLC, Docket Number 2020-0421-PST-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "\$5,715."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202101965
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 18, 2021



Notice of Correction to Agreed Order Number 17

In the March 5, 2021, issue of the *Texas Register* (46 TexReg 1525), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 17, for SEGUIN BUSINESS, L.L.C. dba Park Palace 1, Docket Number 2019-1065-PST-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "SEGUIN BUSINESS, L.L.C. dba Park Place 1."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202101964
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 18, 2021



Notice of District Petition

Notice issued May 13, 2021

TCEQ Internal Control No. D-04122021-018; Headway Estates, Ltd. and Bankers Commercial Corporation ("Petitioners") filed a petition for creation of Freeport Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owners of a majority in value of the property within the proposed District; (2) there are no lienholders on the portion of the property within the proposed District owned by Headway Estates, but on the portion of the property within the proposed District owned by Bankers Commercial Corporation, there is one lienholder, MUFUG Union Bank, N.A.; (3) the proposed District will contain approximately 327.584 acres located within Brazoria County, Texas; and (4) the proposed District is within the corporate limits of the City of Freeport, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The Petitioner has also provided the TCEQ with a certificate evidencing the consent of MUFUG Union Bank, N.A. to the creation of the proposed District. By Resolution No. 2020-2664 passed on October 19, 2020, the City of Freeport, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code Section 54.016 and authorized the Skymark Development Company, Inc. (Skymark) and the Petitioners to initiate proceedings to create this political subdivision within its jurisdiction. Skymark will be the developer constructing the improvements for the District and has common ownership with Headway Estates, Ltd., according to application material. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, provide, extend, maintain, repair and operate inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial and commercial purposes; (2) collect, transport, process, dispose of and control

domestic, industrial and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water; (4) construct, maintain, improve and operate graveled or paved roads or turnpikes that serve or are intended to serve as roads, or works, facilities or improvements in aid of those roads and turnpikes, inside or outside the boundaries of the District, to the extent authorized by Article III, Section 52 of the Texas Constitution; and (5) purchase, construct acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries, such additional facilities, plants, systems and enterprises as shall be consistent with the purpose for which the District is created, all as more particularly described in an engineer's report filed simultaneously with this petition. It may also purchase, construct, acquire, provide, operate, maintain, repair, improve, extend and develop park and recreational facilities, and a solid waste collection and disposal system. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioner, from the information available at this time, that the cost of said project will be approximately \$27,000,000 (\$21,500,000 for water, wastewater and drainage plus \$5,500,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202101949

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 17, 2021



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

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 29, 2021**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 29, 2021**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Austin Forest Creek Apartments, L.C.; DOCKET NUMBER: 2018-1176-WQ-E; TCEQ ID NUMBER: RN106614704; LOCATION: 1401 Saint Edwards Drive, Austin, Travis County; TYPE OF FACILITY: apartment complex; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of recreational waste into or adjacent to water in the state; PENALTY: \$8,000; STAFF ATTORNEY: Roslyn Dubberstein, Litigation, MC 175, (512) 239-0683; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: Randy L. Snapp dba Fredericksburg Kampgrounds of America; DOCKET NUMBER: 2020-0537-PWS-E; TCEQ ID NUMBER: RN101257129; LOCATION: 5681 East United States Highway 290, Fredericksburg, Gillespie County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.109(d)(4)(B), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on December 11, 2018 and August 5, 2019, at least one raw groundwater source *E. coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected; 30 TAC §290.122(c)(2)(A) and (f) and TCEQ Default Order Docket Number 2018-1169-PWS-E, Ordering Provision Number 3.a.i., by failing to issue public notification and submit a copy of the notification, accompanied with a signed Certificate of Delivery, to the executive director (ED) regarding the failure to provide the results of nitrate monitoring for the January 1, 2017 - December 31, 2017 monitoring period; 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the notification, accompanied with a signed Certificate of Delivery, to the ED regarding

the failure to provide the results of secondary constituent sampling for the January 1, 2015 - December 31, 2017 monitoring period; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual Public Health Service fees and any associated late fees for TCEQ Financial Administration Account Number 90860003 for Fiscal Years 2012 - 2020; 30 TAC §290.106(e), by failing to provide the results of nitrate sampling to the ED for the January 1, 2019 - December 31, 2019 monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED, accompanied with a signed Certificate of Delivery, regarding the failure to collect, within 24 hours of notification of the routine distribution total coliform-positive sample collected on December 11, 2018, at least one raw groundwater source *E. coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive sample was collected; PENALTY: \$1,440; STAFF ATTORNEY: Judy Bohr, Litigation, MC 175, (512) 239-5807; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Sandra West dba Home on the Range RV Park; DOCKET NUMBER: 2019-1377-PWS-E; TCEQ ID NUMBER: RN106595366; LOCATION: 3239 Interstate 45 South near Madisonville, Madison County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous water service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential hazards exist; Texas Health and Safety Code (THSC), §341.0351 and 30 TAC §290.39(j), by failing to notify the ED prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; THSC, §341.0315(c), 30 TAC §290.45(c)(1)(A)(i), and TCEQ AO Docket Number 2014-0135-PWS-E, Ordering Provision Number 2.a.i., by failing to provide a well capacity of 1.0 gallon per minute per unit; THSC, §341.0315(c), 30 TAC §290.45(c)(1)(A)(ii), and TCEQ AO Docket Number 2014-0135-PWS-E, Ordering Provision Number 2.a.ii., by failing to provide a pressure tank capacity of 10 gallons per unit; 30 TAC §290.41(c)(3)(A) and TCEQ AO Docket Number 2014-0135-PWS-E, Ordering Provision Numbers 2.a.iii. and 2.c., by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$28,250; STAFF ATTORNEY: Ryan Rutledge, Litigation, MC 175, (512) 239-0630; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: SIGMOR BEVERAGE, INC. fka SIGMOR NUMBER 80, INC. dba Corner Store 0080; DOCKET NUMBER: 2019-0592-PST-E; TCEQ ID NUMBER: RN102375953; LOCATION: 3909 Guadalupe Street, Austin, Travis County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §115.225, by failing to comply with annual Stage I vapor recovery testing requirements - specifically, the pressure decay test indicated that the vapor recovery system had failed and the system was not released; PENALTY: \$3,687; STAFF ATTORNEY: Ben Warmes, Litigation, MC 175, (512) 239-5144;

REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

TRD-202101966

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 18, 2021



Notice of Public Meeting for Hazardous Industrial Waste Permit/Compliance Plan Renewal with Major Amendment: Permit/Compliance Plan No. 50343

APPLICATION. Union Pacific Railroad Company, owner of the Houston Wood Preserving Works located at 4910 Liberty Road, Houston, Texas, 77026 in Harris County, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal and major amendment of Hazardous Waste Permit/Compliance Plan No. 50343 to authorize: the continued post-closure care and corrective action at the facility; the addition of solid waste management units and areas of concern subject to corrective action; updates to on-site and off-site plume management zones; the addition of a Response Action Plan to address soil and groundwater contamination; the addition of alternate point of exposure wells; a facility name change from Union Pacific Railroad Company, Houston Tie Plant to Union Pacific Railroad Company, Houston Wood Preserving Works; changes in the facility legal description, financial assurance, and to the facility boundary; typographical corrections; and administrative changes. TCEQ received the application on December 10, 2014. The following link to an electronic map of the facility or the facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1izXY>. For exact location, refer to application.

EXECUTIVE DIRECTOR ACTION. The TCEQ Executive Director has completed a technical review of the application and prepared a draft permit/compliance plan that if granted, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that the draft permit/compliance plan, if granted, would meet all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. The purpose of the public meeting is for the public to provide input for consideration by the commission and for the applicant and the commission staff to provide information to the public. A public meeting 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. Response will be provided orally during the Informal Discussion Period. During the Formal Discussion Period on the permit application, members of the public may state their formal comments orally into the official record. The Executive Director will prepare a written response to all relevant and material or significant formal comments received before the close of the public comment period. A copy of the written response will be sent to each person who submits a formal comment or a request to be added to the mailing list for this permit application and provide a mailing address. The executive director will consider all timely public comments received including public comments received in writing or spoken during the Formal Comment Period of the public meeting before a decision is reached on the permit application. If a contested case hearing

is granted for this application the Commission may only consider relevant and material issues raised before the close of all applicable public comment periods. The public comment period for this application has been extended until the close of the public meeting.

The Public Meeting is to be held:

Monday, June 21, 2021 at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 671-777-035. 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, (415) 930-5321 and enter access code 358-549-912.

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 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. General information can be found at our website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, the Executive Director's preliminary decision, and the draft permit/compliance plan are available for viewing and copying at Tuttle Branch Library 702 Kress, Houston, Texas 77020. Additional technical information may be obtained from Mr. Kevin Peterburs, Union Pacific Railroad Company, Senior Manager Environmental Site Remediation, by calling (414) 267-4164. Information requests associated with general public inquiries may be obtained from Mr. Richard Zientek, Union Pacific Railroad Company, Senior Director Public Affairs, by calling (281) 350-7178.

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 12, 2021

TRD-202101872

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 12, 2021



Notice of Request for Public Comment and Notice of a Public Meeting on a Proposed Amendment to the Air Quality Standard Permit for Concrete Batch Plants

On March 16, 2020, in accordance with Texas Government Code, §418.016, Governor Abbott suspended various provisions of the Texas Open Meetings Act that require government officials and members of the public to be physically present at a specified meeting location. Pursuant to that suspension, the public will not be able to attend this public meeting in person but may attend virtually via teleconference at no cost.

The Texas Commission on Environmental Quality (TCEQ or commission) is providing an opportunity for public comment and will conduct a public meeting to receive testimony regarding a proposed amendment to the air quality standard permit for concrete batch plants (CBP) for issuance under the Texas Clean Air Act, Texas Health and Safety Code, §382.05195, Standard Permit and 30 Texas Administrative Code (TAC) Chapter 116, Subchapter F, Standard Permits.

TCEQ originally issued the concrete batch plant standard permit in 2000, amended it in 2003 and again in 2012. This proposed amendment will update the standard permit to add the exemption from emissions and distance limitations in 30 TAC §116.610(a)(1). This exemption was inadvertently removed during the 2012 amendment.

The proposed amendment to the air quality standard permit is subject to a 30-day comment period. During the comment period, any person may submit written comments on the proposed standard permit amendment. After the public comment period, TCEQ may revise the draft standard permit if appropriate. The final standard permit will then be considered by the commission for adoption. Upon adoption of the standard permit by the commission, the final standard permit and a response to all comments received will be made available on TCEQ's website.

The commission will hold a public meeting on this proposal via telephone conference on **June 28, 2021, at 7:00 p.m.** The meeting is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. Open discussion will not be permitted during the meeting; however, TCEQ staff members will be available to discuss the proposal 30 minutes prior to the meeting.

To listen to or participate in the public meeting or the informal question-and-answer period prior to the meeting, members of the public should **register as indicated below before 5:00 p.m. on June 27, 2021.**

To register, please email david.munzenmaier@tceq.texas.gov or call (512) 239-6092 and provide the following information (please leave a voicemail):

1. Subject: CBP SP Amendment Registration for 2021-016-OTH-NR
2. Your Name
3. Title
4. Whom you represent (self or company/client)
5. Mailing Address
6. Phone Number
7. Whether you wish to provide official testimony

At 6:30 p.m. on June 28, 2021, members of the public may call (877) 820-7831 (International: 1-720-279-0026) and enter access code 181446#. The line will be open from 6:30 p.m. to 7:00 p.m. for members of the public to ask questions about the proposed amended standard permit. **Beginning at 7:00 p.m.,** the line will *only* be open to receive official testimony from members of the public concerning the proposed standard permit.

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact Gwen Ricco, Office of Legal Services at (512) 239-2678 or (800) RE-

LAY-TX (TDD). Requests should be made within five business days prior to the scheduled date of the meeting.

Please periodically check https://www.tceq.texas.gov/permitting/air/nav/nsr_news.html before the meeting date for meeting related updates.

Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. All comments should reference Non-Rule Project Number 2021-016-OTH-NR. **The comment period closes midnight on June 29, 2021.** Please choose one of the methods provided to submit your written comments.

Copies of the standard permit can be obtained from the commission's website at <https://www.tceq.texas.gov/permitting/air/nav/standard.html>. For further information, please contact Mr. David Munzenmaier, Air Permits Division, at (512) 239-6092 (please leave a voicemail).

TRD-202101983

Robert Martinez

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 18, 2021



General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 3, 2021 to May 14, 2021. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office website. The notice was published on the website on Friday, May 21, 2021. The public comment period for this project will close at 5:00 p.m. on Sunday, June 20, 2021.

FEDERAL AGENCY ACTIONS:

Applicant: Texas Parks and Wildlife Department

Location: In the Gulf of Mexico, within the regulatory jurisdiction of the Galveston District excluding Louisiana waters, in water depths of 300 meters or less.

Project Description: This Regional General Permit (RGP) would authorize the work and placement of structures in navigable waters of the US for the construction, maintenance, and repair of artificial reefs as part of work conducted by the Texas Parks and Wildlife Department (TPWD).

When considering an application for an artificial reef, as defined in 33 CFR 322.2(g), the Corps reviews TPWD's provisions for siting, constructing, monitoring, operating, maintaining, and managing the pro-

posed artificial reef and determines if those provisions are consistent with the following standards: 1) the enhancement of fishery resources to the maximum extent practicable; 2) the facilitation of access and utilization by United States recreational and commercial fishermen; 3) the minimization of conflicts among competing uses of the navigable waters or waters overlying the outer continental shelf and of the resources in such waters; 4) the minimization of environmental risks and risks to personal health and property; 5) generally accepted principles of international law; and 6) the prevention of any unreasonable obstructions to navigation.

RGPs are permits issued by a district or division engineer on a regional basis to streamline the authorization of activities that are substantially similar in nature and cause only minimal individual and cumulative environmental impacts. The purpose of this RGP is to expedite the Corps' review of requests for authorization from the TPWD to construct, maintain, and repair artificial reefs. This RGP was last reissued in June 2016 and expires on June 20, 2021 (attached for reference). The Corps proposes only to modify the permit format to increase efficient implementation and provide clarity to the verification process, as well as the terms and conditions of the permit.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-1994-00026. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 21-1295-F2

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202101982

Mark A. Havens

Chief Clerk

General Land Office

Filed: May 18, 2021



Texas Health and Human Services Commission

Notice of Public Hearing on Proposed 1115 Texas Healthcare Transformation Quality Improvement Program (THTQIP) Waiver Extension Application

Hearing. The Health and Human Services Commission (HHSC) will conduct a public hearing on June 2, 2021, at 10:00 a.m. (CDT) to receive public comment on the proposed 1115 Texas Healthcare Transformation Quality Improvement Program (THTQIP) Waiver Extension Application.

The public hearing will be held at UT Southwestern Medical Center, the T. Boone Pickens Building Auditorium, located at 6001 Forest Park Road, Dallas, Texas. The T. Boone Pickens Building is located between Inwood Road and Mockingbird Lane, and between Maple Avenue and Harry Hines Boulevard.

The hearing will also be conducted virtually through GoToWebinar. To listen and to provide oral comments, visit http://texashhmeetings.org/1115Waiver_June22021.

The agenda for the meeting is: 1. Welcome and introductions; 2. Overview of application; 3. Public comment; 4. Adjournment.

In-Person and Virtual Testimony. Public testimony will be taken in-person at the hearing as well as virtually. Members of the public who would like to provide public testimony are required to register.

Members of the public who would like to testify in-person may pre-register. Please mark the correct box on the registration form found at http://texashhsmeetings.org/1115Waiver_PC_June2021 no later than 10:00 a.m. CDT on Tuesday, June 1, 2021.

Members of the public who would like to testify virtually must register to provide oral comments via GoToWebinar. The moderator will provide access to attendees wishing to provide oral comments virtually during the hearing. Testimony will first be taken from all persons present at the hearing and will be followed by testimony submitted via GoToWebinar. During the hearing, people who did not pre-register, but would like to provide public comment virtually may request this through the GoToWebinar.

Written Comments. Written comments regarding the proposed application may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. on Monday, June 28, 2021. Written comments may be submitted by U.S. mail to the Texas Health and Human Services Commission, Attention: Basundhara Raychaudhuri, Waiver Coordinator, Policy Development Support, Mail Code H-600, P.O. Box 13247, Austin, Texas 78711-3247; by fax to Basundhara Raychaudhuri at (512) 206-3975; or by e-mail to TX_Medic-aid_Waivers@hhsc.state.tx.us.

Contact: To obtain a free copy of the proposed waiver extension application, ask questions, or obtain additional information, please contact the HHSC Waiver Coordination Office at (512) 487-3318 or TX_Medic-aid_Waivers@hhsc.state.tx.us.

This hearing is open to the public. No reservations are required, and there is no cost to attend. In-person attendees who are not fully vaccinated are required by host UT Southwestern Medical Center to wear a mask or face covering. Please be aware of the virtual attendance option and the option to attend a hearing in Austin on June 15, 2021, where masks will not be required by the facility. That meeting will be held at 10 a.m. at the Health and Human Services Commission, Brown-Heatly Building, Public Hearing Room, 4900 North Lamar Blvd., Austin Texas, 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Caroline Sunshine at Caroline.Sunshine@hhs.texas.gov at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202102007

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: May 19, 2021



Notice of Public Hearing on Proposed 1115 Texas Healthcare Transformation Quality Improvement Program (THTQIP) Waiver Extension Application

Hearing. The Health and Human Services Commission (HHSC) will conduct a public hearing on June 15, 2021, at 10:00 a.m. (CDT) to receive public comment on the proposed 1115 Texas Healthcare Transformation Quality Improvement Program (THTQIP) Waiver Extension Application.

The public hearing will be held at HHSC, Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Blvd., Austin, Texas.

Entry is through security at the main entrance of the building facing Lamar Blvd.

The hearing will also be conducted virtually through GoToWebinar. To listen only, visit <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. To provide oral comments, visit http://texashhsmeetings.org/1115Waiver_June152021.

The agenda for the meeting is: 1. Welcome and introductions; 2. Overview of application; 3. Public comment; 4. Adjournment.

In-Person and Virtual Testimony. Public testimony will be taken in-person at the hearing as well as virtually. Members of the public who would like to provide public testimony are required to register.

Members of the public who would like to testify in-person may pre-register. Please mark the correct box on the registration form found at http://texashhsmeetings.org/1115Waiver_PC_June152021 no later than 10:00 a.m. CDT on Monday, June 14, 2021.

Members of the public who would like to testify virtually must register to provide oral comments via GoToWebinar. The moderator will provide access to attendees wishing to provide oral comments virtually during the hearing. Testimony will first be taken from all persons present at the hearing and will be followed by testimony submitted via GoToWebinar. During the hearing, people who did not pre-register, but would like to provide public comment virtually may request this through the GoToWebinar.

Written Comments. Written comments regarding the proposed application may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. on Monday, June 28, 2021. Written comments may be submitted by U.S. mail to the Texas Health and Human Services Commission, Attention: Basundhara Raychaudhuri, Waiver Coordinator, Policy Development Support, Mail Code H-600, P.O. Box 13247, Austin, Texas 78711-3247; by fax to Basundhara Raychaudhuri at (512) 206-3975; or by e-mail to TX_Medic-aid_Waivers@hhsc.state.tx.us.

Contact: To obtain a free copy of the proposed waiver extension application, ask questions, or obtain additional information, please contact the HHSC Waiver Coordination Office at (512) 487-3318 or TX_Medic-aid_Waivers@hhsc.state.tx.us.

This hearing is open to the public. No reservations are required, and there is no cost to attend. There is no mask requirement for this meeting.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Caroline Sunshine at Caroline.Sunshine@hhs.texas.gov at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202102009

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: May 19, 2021



Public Notice: Texas Healthcare Transformation Quality Improvement Program (THTQIP) Waiver Under Section 1115

The Health and Human Services Commission (HHSC) announces its intent to submit to the Centers for Medicare & Medicaid Services (CMS) a request to extend and to amend the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver under section 1115 of the Social Security Act. The extension request reflects the same terms and conditions agreed to and approved by the Centers

for Medicare and Medicaid Services (CMS) on January 15, 2021, subject to any pending waiver amendments.

The extension request is for approximately 10 years, which will allow the 1115 waiver authority to run through 2030. The requested extension will allow Texas continued flexibility to pursue the established goals of the 1115 waiver, which are to: expand risk-based managed care to new populations and services; support the development and maintenance of a coordinated care delivery system; improve outcomes while containing cost growth; and transition to quality-based payment systems across managed care and providers.

The extension will also create financial stability for Texas Medicaid providers during and subsequent to the ongoing public health emergency, as HHSC works to transition and continue the valuable innovations developed through Delivery System Reform Incentive Payment (DSRIP) program. The extension years better align the DSRIP transition timeline with the overall goals to create a sustainable, integrated managed care program.

Texas seeks the same Standard Terms and Conditions (STCs) previously agreed to and approved by CMS. The January 15, 2021, approved extension included STCs related to new processes and reporting requirements for the state's Directed Payment Programs (DPPs). Proposed DPPs for state fiscal year 2022 include the Comprehensive Hospital Increase Reimbursement Program (CHIRP); Texas Incentives for Physicians and Professional Services (TIPPS) Program; Rural Access to Primary and Preventive Services (RAPPS) Program; Directed Payment Program for Behavioral Health Services (BHS); Quality Incentive Payment Program (QIPP) for Nursing Facilities; and an Ambulance Services Directed Payment Program. The January 15, 2021, approved extension also included: new authority for the state to receive federal financial participation (FFP) for payments made through the Public

Health Providers Charity Care Pool (PHP-CCP); and new reporting and transparency requirements for Home and Community-Based Services to further ensure beneficiary safeguards by adding Long Term Services and Supports (LTSS)-specific performance measures.

A central feature of Texas' November 2020 application was stability through budget certainty for our health care systems across Texas in the midst of the ongoing public health emergency. Through a collaborative process, a waiver agreement was reached between CMS and Texas effective January 15, 2021. CMS withdrew this agreement on April 16, 2021. Texas seeks the same agreement along with pending waiver amendments.

Budget Neutrality

This request includes the rebasing previously approved in the January 15, 2021, version of the STCs. Without waiver, expenditures will be rebased effective in FFY 2023 (Oct 2022-Sep 2023) using FFY 2022 (Oct 2021-Sep 2022) data to establish the rebased without-waiver per member per month (PMPM) costs. To calculate the new rebased amount, without waiver PMPMs will be adjusted to account for annualized amounts of approved state-directed payments (pending state legislative approval) made in FFY 2022. Texas is requesting that in response to the public health emergency, CMS allow a one-time adjustment to budget neutrality to account for impacts of COVID-19 on enrollment and expenditures. A subsequent rebasing exercise to without waiver PMPMs is included effective FFY 2028 using FFY 2026 expenditures. These processes will ensure that budget neutrality will continue to support funding needs and flexibility moving forward. See Texas budget neutrality demonstration.

Managed Care Hospital Transition 1115 Waiver BUDGET NEUTRALITY SUMMARY: Updated Aug 2020 with DY 0-9 Extension	DEMONSTRATION YEARS (DY)					DEMONSTRATION YEARS (DY)					Total 5 yr WOW	2012/2016 Total 5 yr WOW	Extension FY17	FY18	FY19	FY20	FY21	FY22
	DY 01	DY 02	DY 03	DY 04	DY 05	DY 06	DY 07	DY 08	DY 09	DY 10								
	(FY 12)	(FY 13)	(FY 14)	(FY 15)	(FY 16)	(FY 17)	(FY 18)	(FY 19)	(FY 20)	(FY 21)								
WITHOUT WAIVER SUMMARY																		
Aged and Medicare Related	\$ 1,672,219,286	\$ 1,777,474,231	\$ 1,935,624,003	\$ 3,816,413,873	\$ 4,978,845,414	\$ 14,180,776,807	\$ 4,971,952,782	\$ 5,340,592,179	\$ 5,535,642,846	\$ 5,801,900,966	\$ 6,051,426,634	\$ 6,328,421,392	\$ 6,626,928,709	\$ 7,156,659,413	\$ 7,652,128,242	\$ 8,147,215,230	\$ 8,642,710,000	\$ 9,129,200,783
Blind and Disabled	\$ 3,095,202,596	\$ 3,359,275,145	\$ 3,493,565,358	\$ 3,777,107,164	\$ 3,749,639,600	\$ 17,477,782,893	\$ 3,803,642,235	\$ 3,495,499,639	\$ 3,528,146,288	\$ 4,164,146,715	\$ 4,862,402,886	\$ 5,219,902,783	\$ 5,253,764,671	\$ 5,643,302,703	\$ 6,050,241,403	\$ 6,482,041,968	\$ 6,939,874,916	\$ 7,418,905,436
Children	\$ 9,253,764,671	\$ 9,643,302,703	\$ 9,658,186,013	\$ 10,509,241,403	\$ 10,812,041,968	\$ 50,077,138,948	\$ 10,838,874,916	\$ 10,972,640,111	\$ 11,151,003,835	\$ 12,155,842,235	\$ 13,961,267,391	\$ 14,956,305,436	\$ 15,951,349,571	\$ 16,946,390,706	\$ 17,941,431,841	\$ 18,936,472,976	\$ 19,931,514,111	\$ 20,926,555,246
Other Pop. Programs (Not Included in Population)	\$ 22,027,175,163	\$ 23,497,338,095	\$ 24,559,160,149	\$ 28,146,068,876	\$ 30,324,728,117	\$ 128,854,816,330	\$ 30,336,096,630	\$ 32,580,446,634	\$ 33,156,012,081	\$ 35,445,676,182	\$ 38,193,816,473	\$ 41,551,009,448	\$ 45,000,000,000	\$ 48,448,448,448	\$ 51,896,896,896	\$ 55,345,345,345	\$ 58,793,793,793	\$ 62,242,242,242
Local Waiver Expenditures																		
WITH WAIVER SUMMARY																		
Aged and Medicare Related	\$ 1,177,336,276	\$ 1,482,186,850	\$ 1,675,335,985	\$ 3,250,652,131	\$ 4,432,211,120	\$ 12,018,133,362	\$ 4,963,489,095	\$ 4,376,613,029	\$ 4,764,851,003	\$ 5,056,948,102	\$ 5,347,977,589	\$ 5,639,112,076	\$ 5,930,256,565	\$ 6,221,401,052	\$ 6,512,549,538	\$ 6,803,698,024	\$ 7,094,846,510	\$ 7,385,994,996
Blind and Disabled	\$ 4,691,415,315	\$ 5,565,062,120	\$ 5,909,237,136	\$ 6,498,072,862	\$ 6,963,121,301	\$ 29,656,908,734	\$ 7,877,842,265	\$ 7,981,456,175	\$ 8,433,485,219	\$ 9,056,735,699	\$ 9,786,002,611	\$ 10,167,464,135	\$ 10,548,926,061	\$ 10,930,387,987	\$ 11,311,848,913	\$ 11,693,308,839	\$ 12,073,768,765	\$ 12,454,228,691
Adults	\$ 1,739,536,171	\$ 1,723,939,563	\$ 1,781,306,866	\$ 1,910,510,965	\$ 1,883,898,218	\$ 9,037,191,783	\$ 1,922,365,980	\$ 2,045,139,387	\$ 2,107,971,149	\$ 2,435,176,069	\$ 2,801,179,661	\$ 3,294,750,965	\$ 3,789,335,271	\$ 4,283,919,577	\$ 4,778,503,883	\$ 5,267,088,189	\$ 5,755,672,495	\$ 6,244,246,801
Children	\$ 6,879,656,097	\$ 7,143,108,267	\$ 7,615,974,372	\$ 7,757,066,700	\$ 7,656,959,171	\$ 37,022,106,607	\$ 6,590,892,351	\$ 7,589,319,972	\$ 7,552,073,276	\$ 7,661,475,298	\$ 8,954,956,987	\$ 9,643,443,523	\$ 10,331,930,060	\$ 11,020,417,547	\$ 11,708,905,034	\$ 12,397,392,521	\$ 13,086,880,008	\$ 13,776,364,495
Other Pop. Programs (Not Included in Population)	\$ 14,095,243,869	\$ 15,914,686,800	\$ 16,981,954,359	\$ 19,416,135,658	\$ 20,906,229,810	\$ 87,704,340,487	\$ 21,384,579,992	\$ 21,965,526,574	\$ 22,838,300,648	\$ 24,019,332,468	\$ 26,484,098,878	\$ 28,958,840,290	\$ 31,428,591,706	\$ 33,898,333,122	\$ 36,368,075,538	\$ 38,837,817,954	\$ 41,307,562,380	\$ 43,777,306,806
Non-Pool Expenditures																		
Savings Phase-Down: Percentages																		
Aged and Medicare Related																		
Adults																		
Children																		
Savings Phase-Down: Amounts to Subtract																		
Aged and Medicare Related																		
Adults																		
Children																		
Total Savings Removed																		
Waiver Pool																		
Uncompensated Care Pool Payments	\$ 3,700,000,000	\$ 3,900,000,000	\$ 3,934,000,000	\$ 3,348,000,000	\$ 3,100,000,000	\$ 17,582,000,000	\$ 3,100,000,000	\$ 3,101,776,278	\$ 3,101,776,278	\$ 3,101,776,278	\$ 3,873,266,193	\$ 4,145,755,169	\$ 4,414,744,145	\$ 4,683,733,121	\$ 4,952,722,097	\$ 5,221,711,073	\$ 5,490,700,049	\$ 5,759,689,025
PPF-CCFP Payments	\$ 500,000,000	\$ 2,300,000,000	\$ 2,656,000,000	\$ 2,852,000,000	\$ 3,100,000,000	\$ 11,416,000,000	\$ 3,100,000,000	\$ 3,100,000,000	\$ 3,100,000,000	\$ 3,100,000,000	\$ 2,490,000,000	\$ 2,490,000,000	\$ 2,490,000,000	\$ 2,490,000,000	\$ 2,490,000,000	\$ 2,490,000,000	\$ 2,490,000,000	\$ 2,490,000,000
Network/Access Improvement Project																		
NAIP Expenditures	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 631,140,996	\$ 424,954,200	\$ 416,579,398	\$ 413,274,538	\$ 432,509,604	\$ 493,364,220	\$ 427,312,303	\$ 427,312,303	\$ 427,312,303	\$ 427,312,303	\$ 427,312,303	\$ 427,312,303	\$ 427,312,303
Nursing Facility Directed Payments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 679,800,586	\$ 679,800,586	\$ 679,800,586	\$ 679,800,586	\$ 679,800,586	\$ 679,800,586	\$ 679,800,586	\$ 679,800,586	\$ 679,800,586	\$ 679,800,586	\$ 679,800,586	\$ 679,800,586	\$ 679,800,586
Delivery System & Provider Payment Initiatives	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 512,750,684	\$ 512,750,684	\$ 512,750,684	\$ 512,750,684	\$ 512,750,684	\$ 512,750,684	\$ 512,750,684	\$ 512,750,684	\$ 512,750,684	\$ 512,750,684	\$ 512,750,684	\$ 512,750,684	\$ 512,750,684
Quality Incentive Payment Program (QIPP)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 558,144,269	\$ 558,144,269	\$ 558,144,269	\$ 558,144,269	\$ 558,144,269	\$ 558,144,269	\$ 558,144,269	\$ 558,144,269	\$ 558,144,269	\$ 558,144,269	\$ 558,144,269	\$ 558,144,269	\$ 558,144,269
CHRP (UHRP thru FFY21)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
RAPPS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
DPP for BHS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Insurance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TIIPS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Waiver Expenditures	\$ 18,695,243,869	\$ 22,414,996,800	\$ 23,184,354,359	\$ 25,954,362,287	\$ 28,177,724,761	\$ 118,919,282,059	\$ 28,005,532,851	\$ 29,801,473,486	\$ 31,107,543,842	\$ 33,479,269,304	\$ 37,024,069,800	\$ 39,239,994,785	\$ 41,449,329,070	\$ 43,659,698,856	\$ 45,869,983,741	\$ 48,080,268,626	\$ 50,290,553,511	\$ 52,490,828,296
Expenditures (Over)/Under Cap w/ Savings Phase Down	\$ 3,441,931,294	\$ 1,382,641,255	\$ 1,377,305,780	\$ 2,295,966,881	\$ 2,133,917,259	\$ 10,229,762,489	\$ 2,278,158,910	\$ 2,278,158,910	\$ 2,278,158,910	\$ 2,278,158,910	\$ 2,278,158,910	\$ 2,278,158,910	\$ 2,278,158,910	\$ 2,278,158,910	\$ 2,278,158,910	\$ 2,278,158,910	\$ 2,278,158,910	\$ 2,278,158,910
Disals Demonstration Savings Adjustment (0.9% 12/18)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,773,792	\$ 15,773,792	\$ 15,773,792	\$ 15,773,792	\$ 15,773,792	\$ 15,773,792	\$ 15,773,792	\$ 15,773,792	\$ 15,773,792	\$ 15,773,792	\$ 15,773,792	\$ 15,773,792	\$ 15,773,792
Expenditures (Over)/Under Cap w/out DD Savings	\$ 3,441,931,294	\$ 1,382,641,255	\$ 1,377,305,780	\$ 2,295,966,881	\$ 2,133,917,259	\$ 10,245,536,281	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702
5 Year Rollover of Savings	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Expenditures (Over)/Under Cap w/ Savings Rollover	\$ 3,441,931,294	\$ 1,382,641,255	\$ 1,377,305,780	\$ 2,295,966,881	\$ 2,133,917,259	\$ 10,245,536,281	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702	\$ 2,293,932,702

Aggregate expenditures under the 1115 extension are expected to increase consistent with historical state trends. Standard growth trends include population (caseload) growth and cost growth due to inflationary factors from case mix changes, healthcare advancements and rate changes. Within the budget neutrality calculations, HHSC projects, subject to and pursuant to 42 CFR §438.6, over \$7 billion will be included into the Medicaid Managed Care rates through directed payment programs in FFY 2022. These continue funding for current DPPs, launch new DPPs, and incorporate innovations from DSRIP into Medicaid managed care. Pending Applications include over \$5 billion directed to hospital services (CHIRP); \$600 million directed to physicians (TIPPS); \$170 million directed to behavioral

health services (BHS); \$20 million directed to Rural Health Clinics (RAPPS); and \$1.1 Billion directed to nursing facilities services (QIPP). HHSC has submitted a state plan amendment to implement increased reimbursements for public ground ambulance services, which it intends to serve as a basis of a directed-payment program in managed care; in managed care, the estimated annual payments could be \$150 million. HHSC also projects a pool size up to \$500 million in expenditures from the Public Health Provider Charity Care Program for FY 2022 and FY 2023. This is included in Attachment U.

Attachment U

Estimated Without Waiver Per Member Per Month Expenditures

<u>MEG</u>	<u>Trend</u>	<u>DY 11</u>	<u>Rebase DY 12</u>	<u>DY 13</u>	<u>DY 14</u>	<u>DY 15</u>
AMR	<u>3.8%</u>	\$1,455.26	\$1,479.09	\$1,535.29	\$1,593.63	\$1,654.19
Disabled	<u>4.1%</u>	\$2,115.58	\$2,342.42	\$2,438.46	\$2,538.44	\$2,642.51
Adults	<u>5.3%</u>	\$1,547.28	\$1,321.67	\$1,391.72	\$1,465.48	\$1,543.15
Children	<u>4.5%</u>	\$448.52	\$365.95	\$382.42	\$399.63	\$417.62

<u>MEG</u>	<u>Trend</u>	<u>DY 16</u>	<u>Rebase DY 17</u>	<u>DY 18</u>	<u>DY 19</u>
AMR	<u>3.8%</u>	\$1,717.05	\$1,724.85	\$1,780.28	\$1,837.50
Disabled	<u>4.1%</u>	\$2,750.85	\$2,877.62	\$2,995.60	\$3,118.42
Adults	<u>5.3%</u>	\$1,624.93	\$1,326.65	\$1,335.03	\$1,343.47
Children	<u>4.5%</u>	\$436.41	\$398.14	\$406.53	\$415.09

These amounts are an estimate based on Texas' calculation and purely informational. Rebasing PMPMs will occur in DY 12 using DY 11 actual expenditures as reported by the state on the CMS -64.

Potential PHP-CCP Pool Sizes

These amounts are an estimate based on Texas' calculation and purely informational. Resizing the pool will occur in DY13 and DY17, using actual charity care costs as reported by the relevant provider types.

<u>Pool</u>	<u>DY 11</u>	<u>DY 12</u>	<u>Resize DY 13</u>	<u>DY 14</u>	<u>DY 15</u>
PHP-CCP	\$500m	\$500m	\$370m	TBD	TBD

<u>Pool</u>	<u>DY 16</u>	<u>Resize DY 17</u>	<u>DY 18</u>	<u>DY 19</u>
PHP-CCP	TBD	TBD	TBD	TBD

Evaluation Design

Texas will develop a new evaluation design for the 10-year extension period and plans to incorporate the following updates into the design to

reflect recent or future changes to the THTQIP demonstration waiver. Texas will replace the DSRIP component of the evaluation with a component on the new DPPs, including evaluation questions assessing how

the DPPs support providers' transition from DSRIP; broaden the focus of the Medicaid Managed Care (MMC) component of the evaluation to incorporate evaluation questions on overall MMC performance over time; incorporate evaluation questions on the new PHP-CCP, including questions assessing the intersection between the existing Uncompensated Charity Care (UCC) pool and PHP-CCP; and incorporate additional evaluation questions assessing cost outcomes for the demonstration as a whole.

Benefits

The extension will not change the array of benefits provided under the current 1115 waiver authority.

Eligibility

The extension does not make any changes to eligibility requirements. Extending the waiver will not have a significant impact on enrollment.

Cost Sharing

Under the extension there will continue to be no beneficiary cost sharing.

Full Public Notice

The full public notice regarding this extension request will be available at <https://hhs.texas.gov/laws-regulations/policies-rules/waivers/waiver-renewal>. Copies of the proposed extension application will be available for review at the local county offices of HHSC.

Location and Times of Public Hearings

1115 Transformation Waiver: Extension Application Public Hearing on June 2, 2021, at 10:00 am on the campus of UT Southwestern Medical Center, T. Boone Pickens Building, Auditorium, 6001 Forest Park Road, Dallas, Texas 75235. (Located between Inwood Road and Mockingbird Lane, and between Maple Avenue and Harry Hines Boulevard). This is an in-person and virtual hearing. To participate virtually, members of the public must register at http://texashhsmeetings.org/1115Waiver_June22021.

Medical Care Advisory Committee will be held on June 10, 2021, at 9:00 am. This is a virtual-only meeting. Members of the public must register for the meeting at http://texashhsmeetings.org/MCAC_PCReg_June2021.

1115 Transformation Waiver: Extension Application Public Hearing on June 15, 2021, at 10:00 am at the Health and Human Services Commission, Brown-Heatly Building, Public Hearing Room, 4900 North Lamar Blvd., Austin, Texas 78751. This is an in-person and virtual hearing. A link to the webcast and virtual registration for commenters wishing to provide testimony during the hearing will be included in the agenda posted in the Texas Register and on the HHSC's website.

Additional Opportunity for Comment

From the date of public notice in the Texas Register until June 28, 2021, an individual may obtain a free copy of the proposed waiver extension application, ask questions, obtain additional information, or submit comments regarding this proposed extension application by contacting Basundhara Raychaudhuri by U.S. mail, telephone, fax, or email at:

U.S. Mail

Texas Health and Human Services Commission

Attention: Basundhara Raychaudhuri, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

Telephone

(512) 487-3318

Fax

Attention: Basundhara Raychaudhuri, Waiver Coordinator, at (512) 206-3975

TRD-202102011

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: May 19, 2021

Texas Department of Housing and Community Affairs

Notice of Public Hearing and Public Comment Period on the Draft 2022 Regional Allocation Formula Methodology

The Texas Department of Housing and Community Affairs (the Department) will hold a public hearing to accept public comment on the Draft 2022 Regional Allocation Formula (RAF) Methodology.

The public hearing will take place as follows:

Wednesday, June 2, 2021

2:00 p.m. Austin local time

Via GoToWebinar

<https://attendee.gotowebinar.com/register/8184713294852204043>

Dial-in number: +1 (213) 929-4232, access code 195-032-435 (persons who use the dial-in number and access code without registering online will only be able to hear the public hearing and will not be able to ask questions or provide comments)

The RAF may be accessed from TDHCA's Public Comment Center at: <https://www.tdhca.state.tx.us/public-comment.htm>.

The RAF utilizes appropriate statistical data to measure the affordable housing need and available resources in the 13 State Service Regions that are used for planning purposes. The RAF also allocates funding to rural and urban subregions within each region. The Department has flexibility in determining variables to be used in the RAF, per §2306.1115(a)(3) of the Tex. Gov't Code, "the department shall develop a formula that...includes other factors determined by the department to be relevant to the equitable distribution of housing funds..." The RAF is revised annually to reflect current data, respond to public comment, and better assess regional housing needs and available resources.

The RAF methodology explains the use of factors, in keeping with the statutory requirements, which include the need for housing assistance, the availability of housing resources, and other factors relevant to the equitable distribution of housing funds in urban and rural areas of the state.

The Single Family HOME Investment Partnerships Program (HOME), Multifamily HOME, Housing Tax Credit (HTC), and Housing Trust Fund (HTF) program RAFs each use slightly different formulas because the programs have different eligible activities, households, and

geographical service areas. For example, §2306.111(c) of the Tex. Gov't Code requires that 95% of HOME funding be set aside for non-participating jurisdictions (non-PJs). Therefore, the Single Family and Multifamily HOME RAFs only use need and available resource data for non-PJs.

The public comment period for the Draft 2022 RAF methodology will be open from Monday, May 24, 2021, through Thursday, June 24, 2021, at 5:00 p.m., Austin local time. Anyone may submit comments on the Draft 2022 RAF Methodology in written form or oral testimony at the June 2, 2021, public hearing.

Written comments concerning the Draft 2022 RAF Methodology may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, TX 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-0070. Comments must be received no later than Thursday, June 24, 2021, at 5:00 p.m. Austin local time.

Individuals who require auxiliary aids or services for the public hearing on June 2, 2021, should contact Nancy Dennis, at (512) 475-3959 or Relay Texas at (800) 735-2989, at least three days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the public hearing should contact Elena Peinado by phone at (512) 475-3814 or by email at elena.peinado@tdhca.state.tx.us at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o enviarle un correo electrónico a elena.peinado@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-202101939
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 14, 2021

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Texas Department of Insurance

Company Licensing

Application for Vesta Insurance Corporation, a domestic fire and/or casualty company, to change its name to DNA Insurance Company. The home office is in Dripping Springs, 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-202102012
James Person
General Counsel
Texas Department of Insurance
Filed: May 19, 2021

◆ ◆ ◆

Texas Lottery Commission

Scratch Ticket Game Number 2295 "TEXAS RED WHITE & BLUE™"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2295 is "TEXAS RED WHITE & BLUE™". The play style is "slots - multiple line".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2295 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2295.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: BANK SYMBOL, BAR SYMBOL, BELL SYMBOL, BILL SYMBOL, CHERRY SYMBOL, CHEST SYMBOL, CHIP SYMBOL, CLUB SYMBOL, COINS SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, FIREWORKS SYMBOL, FLAG SYMBOL, RABBIT FOOT SYMBOL, HEART SYMBOL, HORSESHOE SYMBOL, JOKER SYMBOL, KEY SYMBOL, LEMON SYMBOL, MELON SYMBOL, NECKLACE SYMBOL, POT OF GOLD SYMBOL, RAINBOW SYMBOL, RING SYMBOL, SPADE SYMBOL, STAR SYMBOL, SUN SYMBOL, VAULT SYMBOL, WISHBONE SYMBOL, DICE SYMBOL, MONEY BAG SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2295 - 1.2D

PLAY SYMBOL	CAPTION
BANK SYMBOL	BANK
BAR SYMBOL	BAR
BELL SYMBOL	BELL
BILL SYMBOL	BILL
CHERRY SYMBOL	CHERRY
CHEST SYMBOL	CHEST
CHIP SYMBOL	CHIP
CLUB SYMBOL	CLUB
COINS SYMBOL	COINS
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DIAMOND
FIREWORKS SYMBOL	FIREWKS
FLAG SYMBOL	FLAG
RABBIT FOOT SYMBOL	FOOT
HEART SYMBOL	HEART
HORSESHOE SYMBOL	SHOE
JOKER SYMBOL	JOKER
KEY SYMBOL	KEY
LEMON SYMBOL	LEMON
MELON SYMBOL	MELON
NECKLACE SYMBOL	NECKLACE
POT OF GOLD SYMBOL	POTGLD
RAINBOW SYMBOL	RAINBOW
RING SYMBOL	RING
SPADE SYMBOL	SPADE

STAR SYMBOL	STAR
SUN SYMBOL	SUN
VAULT SYMBOL	VAULT
WISHBONE SYMBOL	WISHBONE
DICE SYMBOL	SIX
MONEY BAG SYMBOL	DBL
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$1,000	ONTH
\$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2295), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2295-0000001-001.

H. Pack - A Pack of the "TEXAS RED WHITE & BLUE™" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "TEXAS RED WHITE & BLUE™" Scratch Ticket Game No. 2295.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "TEXAS RED WHITE & BLUE™" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty (80) Play Symbols. If a player reveals 3 matching Play Symbols in the same SPIN, the player wins the PRIZE for that SPIN. If the player reveals 2 matching Play Symbols and a "MONEY BAG" Play Symbol in the same SPIN, the player wins DOUBLE the PRIZE for that SPIN. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eighty (80) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly eighty (80) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the eighty (80) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the eighty (80) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. A Ticket can win up to twenty (20) times in accordance with the approved prize structure.
- B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.
- C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.
- D. There will be no matching non-winning SPINs on a Ticket. SPINs are considered matching if they have the same Play Symbols in the same spots.
- E. No three (3) or more matching non-winning Play Symbols will appear in adjacent positions diagonally or in a column.
- F. The "MONEY BAG" (DBL) Play Symbol will only appear on winning Tickets and will appear on winning SPINs as dictated by the prize structure.
- G. No more than two (2) matching non-winning Play Symbols will appear in one (1) SPIN.
- H. Non-winning Prize Symbols will never appear more than three (3) times.
- I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS RED WHITE & BLUE™" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS RED WHITE & BLUE™" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS RED WHITE & BLUE™" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery

Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "TEXAS RED WHITE & BLUE™" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "TEXAS RED WHITE & BLUE™" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,320,000 Scratch Tickets in Scratch Ticket Game No. 2295. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2295 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	683,200	10.71
\$10.00	292,800	25.00
\$20.00	585,600	12.50
\$50.00	97,600	75.00
\$100	9,760	750.00
\$500	793	9,230.77
\$1,000	90	81,333.33
\$100,000	5	1,464,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.38. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2295 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2295, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202101954
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: May 17, 2021



Scratch Ticket Game Number 2345 "\$1,000,000 CROSSWORD"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2345 is "\$1,000,000 CROSSWORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2345 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2345.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, BLACKENED SQUARE SYMBOL, \$20.00, \$40.00, \$50.00, \$100, \$150, \$200, \$500 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2345 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	

Z	
BLACKENED SQUARE SYMBOL	
\$20.00	TWY\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$150	ONFF
\$200	TOHN
\$500	FVHN
\$1,000	ONTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2345), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2345-0000001-001.

H. Pack - A Pack of the "\$1,000,000 CROSSWORD" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$1,000,000 CROSSWORD" Scratch Ticket Game No. 2345.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly four hundred

eighty-four (484) Play Symbols. A prize winner in the "\$1,000,000 CROSSWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: The player completely scratches all of the YOUR 20 LETTERS Play Symbols. The player then scratches all the letters found in the \$1,000,000 CROSSWORD puzzle that exactly match the YOUR 20 LETTERS Play Symbols. If the player has scratched at least 2 complete WORDS, the player wins the prize found in the PRIZE LEGEND on the back of the Scratch Ticket. Only one prize paid in the \$1,000,000 CROSSWORD puzzle. Only letters within the \$1,000,000 CROSSWORD puzzle that are matched with the YOUR 20 LETTERS Play Symbols can be used to form a complete WORD. Every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS Play Symbols to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. A complete WORD must contain at least three letters. BONUS WORDS: The player scratches all the letters in BONUS WORD 1 and BONUS WORD 2 that exactly match the YOUR 20 LETTERS Play Symbols. If the player scratches a complete BONUS WORD, the player wins the PRIZE for that BONUS WORD. A completed BONUS WORD cannot be used to win in the \$1,000,000 CROSSWORD puzzle. The \$1,000,000 CROSSWORD puzzle and each BONUS WORD are played separately. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly four hundred eighty-four (484) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption. Crossword and Bingo style games do not typically have Play Symbol Captions;

3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The Scratch Ticket shall be intact;
 6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
 8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The Scratch Ticket must not be counterfeit in whole or in part;
 10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The Scratch Ticket must be complete and not miscut, and have exactly four hundred eighty-four (484) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
 14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
 15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the four hundred eighty-four (484) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the four hundred eighty-four (484) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a de-

fective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: Each Ticket in a Pack will be different (i.e., the \$1,000,000 CROSSWORD puzzle grid will have different words and configuration of words and each BONUS WORD will have different words).

D. GENERAL: There will be no correlation between any exposed data on a Ticket and its status as a winning or Non-Winning Ticket.

E. GENERAL: Each Ticket consists of a \$1,000,000 CROSSWORD puzzle grid, a YOUR 20 LETTERS play area, two (2) BONUS WORD play areas and a BONUS WORDS PRIZE play area.

F. GENERAL: A Ticket can win one (1) time in the \$1,000,000 CROSSWORD puzzle grid and one (1) time per BONUS WORD for a total of up to three (3) times per Ticket, as dictated by the prize structure.

G. GENERAL: The BONUS WORDS Prize Symbols will only appear in the BONUS WORDS PRIZE play area and will never appear in either of the BONUS WORDS play areas, the \$1,000,000 CROSSWORD puzzle grid or the YOUR 20 LETTERS play area.

H. MAIN PLAY AREA: The \$1,000,000 CROSSWORD puzzle grid will be formatted with at least one thousand (1,000) configurations (i.e., puzzle layouts not including words).

I. MAIN PLAY AREA: All \$1,000,000 CROSSWORD puzzle grid configurations will be formatted within a grid that contains thirty (30) spaces (height) by fifteen (15) spaces (width).

J. MAIN PLAY AREA: No matching words on a Ticket.

K. MAIN PLAY AREA: No matching Play Symbols in the YOUR 20 LETTERS play area.

L. MAIN PLAY AREA: Each grid will contain the following: a) Twelve (12) 3 - letter words, b) Thirteen (13) 4 - letter words, c) Ten (10) 5 - letter words, d) Ten (10) 6 - letter words, e) Five (5) 7 - letter words, f) Five (5) 8 - letter words, g) Five (5) 9 - letter words.

M. MAIN PLAY AREA: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are A, E, I, O and U.

N. MAIN PLAY AREA: All words will contain a minimum of three (3) letters.

O. MAIN PLAY AREA: Words will contain a maximum of nine (9) letters.

P. MAIN PLAY AREA: All words used will be from Texas_Bonus_v3_Jan2019.doc

Q. MAIN PLAY AREA: Words from Texas_Prohibited_v5_30November2017.doc will not appear horizontally in the YOUR 20 LETTERS play area when read from left to right or right to left.

R. MAIN PLAY AREA: A player will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in

either direction) in the YOUR 20 LETTERS play area that matches a word in the grid.

S. MAIN PLAY AREA: Each grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted grids (i.e., the same puzzle grid), all "approved words" will appear in every logical (i.e., 3 letter word = 3 letter space) position, with regards to limitations caused by the actual letters contained in each word (i.e., this will not place the word "ZOO" in a position that causes an intersection word to require the second letter to be "Z" when in fact, there are no approved words with a "Z" in the second letter position).

T. MAIN PLAY AREA: No consonant will appear more than thirty (30) times in the grid.

U. MAIN PLAY AREA: On Non-Winning Tickets, there will be one (1) completed word in the grid.

V. MAIN PLAY AREA: At least fifteen (15) of the YOUR 20 LETTERS Play Symbols will open at least one (1) letter in the grid.

W. MAIN PLAY AREA: The presence or absence of any letter in the YOUR 20 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

X. MAIN PLAY AREA: The \$1,000,000 CROSSWORD puzzle grid will not have more than ten (10) words completed.

Y. BONUS WORDS: Each of the two (2) BONUS WORDS will contain exactly six (6) letters and will not match any word in the \$1,000,000 CROSSWORD puzzle grid.

Z. BONUS WORDS: Each BONUS WORD will have at least two (2) letter play spots opened by the YOUR 20 LETTERS.

AA. BONUS WORDS: Non-winning BONUS WORDS Prize Symbols will be different and will not match a winning Prize Symbol.

BB. BONUS WORDS: The BONUS WORDS can be completed and won, as indicated by the prize structure.

CC. BONUS WORDS: The two (2) BONUS WORDS on a Ticket will be different.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$1,000,000 CROSSWORD" Scratch Ticket Game prize of \$20.00, \$40.00, \$50.00, \$100, \$150, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00, \$50.00, \$100, \$150, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$1,000,000 CROSSWORD" Scratch Ticket Game prize of \$2,000, \$20,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that

prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$1,000,000 CROSSWORD" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$1,000,000 CROSSWORD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$1,000,000 CROSSWORD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a

prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the

Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2345. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2345 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20.00	1,200,000	7.50
\$40.00	420,000	21.43
\$50.00	480,000	18.75
\$100	420,000	21.43
\$150	36,000	250.00
\$200	72,375	124.35
\$500	6,525	1,379.31
\$2,000	400	22,500.00
\$20,000	18	500,000.00
\$1,000,000	4	2,250,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.42. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2345 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the

Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2345, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the

State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202101985
Bob Biard
General Counsel
Texas Lottery Commission
Filed: May 18, 2021

◆ ◆ ◆
North Central Texas Council of Governments

Request for Proposals for Digital Asset Management Service

The North Central Texas Council of Governments (NCTCOG) is seeking written proposals from qualified firms for a Digital Asset Management (DAM) service to streamline storage, retrieval and use of digital assets among members of NCTCOG's Transportation Department. The DAM will replace/supplement staff's use of the network for storing photo and video assets. It will allow for direct importing of assets into Adobe and Microsoft applications. Assets will be more easily managed, including auto tagging, allowing for greater efficiencies for the department.

Proposals must be received no later than 5:00 p.m., Central Time, on Friday, June 25, 2021, to Whitney Vandiver, Communications Supervisor, 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 28, 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-202102017
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: May 19, 2021

◆ ◆ ◆
Public Utility Commission of Texas

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 13, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. §214(e)(2) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Cross Wireless, L.L.C. dba Bravado Wireless for Designation as an Eligible Telecommunications Carrier, Project Number 52128.

The Application: Cross Wireless, L.L.C. dba Bravado Wireless seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. §214(e)(2) and 16 Texas Administrative Code §26.418.

Cross Wireless, L.L.C. dba Bravado Wireless seeks an ETC designation to provide mobile voice and data as well as fixed wireless internet access services in the areas of Texas for which it will seek federal Lifeline support, and as available, federal high-cost support. The requested service area includes the telephone exchanges of Paris, Texas and is further identified in exhibit A of Cross Wireless's application.

The proposed effective date is June 28, 2021, or 30 days after notice is published, whichever is later.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than June 24, 2021, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Project Number 52128.

TRD-202102010
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: May 19, 2021

◆ ◆ ◆
Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 12, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. § 214(e)(2) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Southwest Arkansas Telecommunications and Technology, Inc. for Designation as an Eligible Telecommunications Carrier, Project Number 52118.

The Application: Southwest Arkansas Telecommunications and Technology, Inc. seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e)(2) and 16 Texas Administrative Code §26.418.

Southwest Arkansas Telecommunications and Technology, Inc. seeks an ETC designation for the sole purpose of providing Lifeline service to qualifying low-income Texas consumers. The requested service area includes the telephone exchanges of Southwest Arkansas Telephone Cooperative, Inc., and Valor Telecommunications of Texas, LP dba Windstream Communications Southwest and are attached to Southwest Arkansas Telecommunications and Technology, Inc.'s application in exhibit B.

The proposed effective date is June 28, 2021, or 30 days after notice is published, whichever is later.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than June 18, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Project Number 52118.

TRD-202102018
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: May 19, 2021

◆ ◆ ◆
Texas Real Estate Commission

Correction to Preamble in 22 TAC Subchapter R, in Chapter 535, General Provisions

The Texas Real Estate Commission proposed amendments to 22 TAC Chapter 535, Subchapter R in the May 21, 2021, issue of the *Texas Register* (46 TexReg 3228). Due to an error as submitted by the agency, the preamble associated with the proposal contained incorrect informa-

tion. The preamble referenced 22 TAC §§535.330 - 535.333 instead of §§535.230 - 535.233. The preamble should have read as follows:

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; §535.230, Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems; §535.231, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems; §535.232, Standards of Practice: Minimum Inspection Requirements for Appliances; §535.233, 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 §535.231, 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 §535.231, 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 §535.230 clarify what an inspector is required to do and report when determining if a HVAC system is functioning properly. The proposed amendments to §535.230 also clarify reporting requirements for gas fixtures and appliance listed under this section to conform to changes made by proposed amendments to §535.231, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

The proposed amendments to §535.231 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 §535.231 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 §535.232 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 §535.232 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

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

The proposed amendments to §535.233 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.

TRD-202101944
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Filed: May 14, 2021

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Texas Department of Transportation

Notice of Virtual Public Hearing Acquisition of PA 86E and PA 86F Gulf Intracoastal Waterway (GIWW) Dredge Material Placement Area Parcels CSJ (Project Number): 5500-00-033 Brazoria County, Texas

The Texas Department of Transportation (TxDOT) is proposing to acquire two separate parcels of land to use as placement areas for materials dredged from the Gulf Intracoastal Waterway (GIWW) in Brazoria County, Texas. This notice advises the public that TxDOT will be conducting an online virtual public hearing on the proposed project. The virtual hearing will be available on Tuesday, June 8, 2021, by 10:00 a.m. To log onto the virtual public hearing, go to the following web address at the date and time indicated above: www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/062221.html. The virtual hearing will consist of a pre-recorded video presentation and will include both audio and visual components. Please note that the presentation will not be available on the website until the time and date listed above.

If you do not have internet access, you may call (512) 468-5630 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, to ask questions and access project materials during the project development process.

Formal written comments may be provided by mail or email as explained below. All written comments will be considered by TxDOT and included as part of the official record. Responses to comments will be prepared by TxDOT, included as part of the hearing and project record and made available online at www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/062221.html.

This notice is provided as required by the Texas Coastal Waterways Act, Transportation Code, Section 51.006. The two proposed parcels of land to be considered for acquisition are Placement Area (PA) 86E and PA 86F. PA 86E is a 102.66-acre parcel of land in the R.H. Barrow Survey, Abstract Number 653, Brazoria County, Texas, and PA 86E is a 22.55-acre parcel of land in the D. Gilliland Survey, Abstract Number 195, Brazoria County, Texas.

TxDOT is acquiring the property to fulfill its responsibilities as the non-federal sponsor of the GIWW. These responsibilities include providing right of way and placement areas for the U.S. Army Corps of Engineers (USACE) operation and maintenance of the GIWW. Right of way and displacement requirements are not applicable for this acquisition.

Environmental documentation, maps and drawings showing the project location, and other information regarding the proposed project are available for inspection online at www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/062221.html.

Maps, USACE environmental documentation, and other displays concerning the proposed site will be available during the virtual public hearing. These displays are on file and available for inspection from Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. at the TxDOT Riverside Campus, 118 E. Riverside Drive, Austin, Texas 78704. To schedule an appointment, please contact Matthew Mahoney at (512) 486-5630.

The virtual public hearing will be conducted in English. If you need an interpreter or document translator because English is not your primary language or you have difficulty communicating effectively in English, one will be provided to you. If you need an interpreter, document translator or have a disability and need assistance, special arrangements can be made to accommodate most needs. If you need interpretation or translation services or you are a person with a disability who requires an accommodation to participate in the virtual public hearing, please contact the TxDOT Maritime Division at (512) 486-5630 no later than 10:00 a.m. CT on Thursday, June 3, 2021. Please be aware that advance notice is required as some services and accommodations may require time for TxDOT to arrange.

Written comments from the public regarding the proposed project may be submitted by mail to the TxDOT Riverside Campus, Attention: Maritime Division, 118 E. Riverside Drive, Austin, Texas 78705. Comments may also be submitted electronically to matthew.mahoney@txdot.gov or online at www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/062221.html. Comments must be received on or before Tuesday, June 22, 2021, to be considered part of the official virtual public hearing record.

Responses to written comments received will be available online at www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/062221.html once they have been prepared.

If you have any general questions or concerns regarding the proposed project or the virtual hearing, please contact Matthew Mahoney, Program Coordinator, Maritime Division at (512) 486-5630 or matthew.mahoney@txdot.gov.

TxDOT Acquisition of PA 86E and PA 86F Virtual Public Hearing - Tuesday, June 8, 2021

TRD-202101882
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: May 13, 2021

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Texas Water Development Board

Applications Received for April 2021

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #6290,7 a request from the City of Barksdale, 25545 Texas Highway 55, Barksdale, Texas 78828-3319, received on April 1, 2021, for 80,300 from the Drinking Water State Revolving Fund for a water system improvement project.

Project ID #62839, a request from the City of Ellinger, P.O. Box 130, Ellinger, Texas 78938-0130, received on April 1, 2021, for \$1,400,000 from the Drinking Water State Revolving Fund for water plant improvement project.

Project ID #62909, a request from the City of Rio Grande City, 5332 East US Highway 83, City of Rio Grande City, Texas 78582, received on April 1, 2021, for \$5,158,000 from the Texas Water Development Fund for old water plant rehabilitation project.

Project ID #73911, a request from Beach City Water Conservation Improvement District, 1980 Post Oak Boulevard, Suite 1380, Houston, Texas 77056-3970, received on April 1, 2021, for \$2,190,000 from the Texas Water Development Fund for wastewater treatment and collection system improvement projects.

Project ID #73910, a request from the City of Dilley, 116 East Miller Street, Dilley, Texas 78017, received on April 2, 2021, for \$4,542,660 from the Clean Water State Revolving Fund for a sewer system improvement project.

Project ID #21794, a request from Greater Texoma Utility Authority on behalf of Princeton, 5100 Airport Drive, Denison, Texas 75020-8448, received on April 20, 2021, for \$11,645,000 from the Texas Water Development Fund, for elevated storage tank and appurtenances, and new water lines and appurtenances projects.

TRD-202101925
Ashley Harden
General Counsel
Texas Water Development Board
Filed: May 14, 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)

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